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No. 34453-8-II

COURT OF APPEALS DIVISION II  
OF THE STATE OF WASHINGTON

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VICTOR BONAGOFSKI, Appellant

vs.

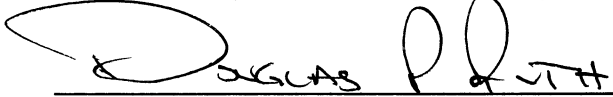
LEWIS COUNTY, Respondent

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AMENDED RESPONSE TO APPELLANT'S OPENING BRIEF

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## TABLE OF CONTENTS

A. Identity of Respondents . . . . .	5
B. Decision Appealed-From . . . . .	5
C. Issues Presented for Review . . . . .	5
D. Statement of the Case . . . . .	5
E. Argument . . . . .	8
1. Trial Court had Sufficient Evidence to Support its Ruling.	8
2. The trial court did not unreasonably deny a discovery request. . . . .	21
3. The trial court did not order an unreasonable seizure by ordering abatement of Mr. Bonagofski's property. . . . .	24
F. Conclusion. . . . .	26

## TABLE OF AUTHORITIES

### **Washington Court of Appeals**

<i>State v. Tracy</i> , 128 Wn.App. 388, 395 n.10 (2005) . . . . .	7, 8, 22
<i>City of Bremerton v. Sesko</i> , 100 Wn. App. 158, 160, 995 P.2d 1257, review denied, 141 Wash.2d 1031, 11 P.3d 825 (2000). . .	14
<i>Tiegs v. Boise Cascade Corp.</i> 83 Wn.App. 411, 417, 922 P.2d 115, (1996). . . . .	16, 17
<i>Wallace v. Lewis County</i> , 134 Wn. App. 1, 137 P.3d 101 (2006) .	15
<i>Quinn Const. Co., L.L.C. v. King County Fire Protection Dist. No. 26</i> , 111 Wn.App. 19, 33, 44 P.3d 865 (2002) . . . . .	20
<i>Thurston County Rental Owners Ass'n v. Thurston County</i> , 85 Wn.App. 171, 183, 931 P.2d 208 (1997) . . . . .	18
<i>Bellevue John Does 1-11 v. Bellevue School District 405</i> 129 Wn.App. 832, 863, 120 P.3d 616, (2005) . . . . .	19
<i>Seattle v. Leach</i> , 29 Wn. App. 81 (citing <i>Marshall v. Barlow's Inc.</i> 436 U.S. 307, 87 S.Ct. 1737 (1967)) . . . . .	21

### **Washington Supreme Court**

<i>Doe v. Puget Sound Blood Ctr.</i> , 117 Wash.2d 772, 777, 819 P.2d 370 (1991) . . . . .	18
<i>Kitsap County v. Kev, Inc.</i> , 106 Wn.2d 135, 138-139, 720 P.2d 818 (1986) . . . . .	16
<i>O'Connor v. Washington State Dept. of Social and Health Services</i> , 143 Wash.2d 895, 910, 25 P.3d 426, (2001) . . . . .	19
<i>Seattle v. Mcready</i> , 123 Wash.2d 260, 278 (1999) . . . . .	21
<i>State v. Seagull</i> , 95 Wash.2d 898, 632 P.2d 44 (1981) . . . . .	18

*State v. Wallin*, 125 Wn.App. 648, 654, 105 P.3d 1037, review  
denied 155 Wash.2d 1012, 122 P.3d 186 (2005) . . . . .17

**Federal District Court of Washington**

*Exendine v. City of Sammamish*, No. C05-436P, 2006 U.S. Dist.  
2006 WL 2927726, at 3 (W.D.Wash., Oct. 11, 2006).. . . . . 24

**Federal 9<sup>th</sup> Circuit Court of Appeals**

*Schneider v. County of San Diego*, 28 F.3d 89, 92 (C.A.9 1994). .24



**A. IDENTITY OF RESPONDENTS**

Lewis County is a political subdivision of the State of Washington. Fred Chapman is the Lewis County Fire Marshall and Diana Yu, MD is the Lewis County Health Officer.

**B. DECISION APPEALED-FROM**

The appellant seeks review of the Order Granting Summary Judgment signed by Judge Nelson Hunt in Lewis County Superior Court on January 27, 2006.

**C. ISSUES PRESENTED FOR REVIEW**

- A. Was there an issue of fact regarding whether the condition of Mr. Bonagofski's property constituted a public nuisance?
- B. Did the trial err in failing to compel discovery?
- C. Did the trial court issue an impermissibly broad search warrant?

**D. STATEMENT OF THE CASE**

The facts necessary to an understanding of the controversy are, in substance, these. Appellant Victor Bonagofski (hereafter "Mr. Bonagofski") is listed as a trustee of the Pisces Family Trust, the owner of property at 1303 Reynolds Road. *Respondent's Supplemental CP at 54.* The trust is an entity of unknown legality in Washington. The trustees are recorded as Mr. Bonagofski and Mr. Jack Norton. *Id.* The property was purchased from Mr.

Bonagofski's brother and his wife, Al and Terri Bonagofski. *Id. at* 55.

Mr. Bonagofski has a history of creating a nuisance on his property. In 1996 and 1999, Lewis County received court orders to abate Mr. Bonagofski's property. *Id. at* 151. Lewis County filed the subject abatement action in July 2004 when Mr. Bonagofski again accumulated hulk vehicles and solid waste on his property. *Petitioner's Supplemental CP at* 34. In 2004 and 2005, County personnel inspected Mr. Bonagofski's property on several occasions and made him aware of the violations occurring on the property. *Respondent's Supplemental CP at* 24, 152, 156. Included among the waste on his property were large amounts of scrap cardboard that filled almost the complete inside of a barn located on the property. *Id. at* 25. The staff members instructed Mr. Bonagofski how to come into compliance with County code. *Id. at* 56-57.

On October 1, 2004, the Lewis County Hearings Examiner ordered, pursuant to County code, the abatement of certain hulk vehicles on Mr. Bonagofski's property. *Id. at* 24. On October 20, 2004, Mr. Bonagofski entered into a voluntary correction agreement with the County. *Id. at* 25. The agreement required Mr. Bonagofski

to complete specified abatement tasks within certain time periods.

*Id. at 20.*

On August 8, 2005, County environmental health staff inspected Mr. Bonagofski's property. They found continuing violations of Lewis County's Solid Waste code. In the view of the staff member, the condition of the property posed a serious health risk to Mr. Bonagofski's neighbors and to the rest of the public. *Respondent's Supplemental CP at 152 & 158.*

Over the next two months, the condition of the property did not improve. On September 26<sup>th</sup> and October 27<sup>th</sup>, 2005, the Lewis County Code Enforcement Officer inspected the property. *Id. at 28.* He observed a greater accumulation of solid waste than in the past several months. He found several hulk vehicles on the property and the continued presence of significant cardboard in Mr. Bonagofski's barn. *Id. at 28-29.*

On January 27, 2006, the court granted the County's motion for summary judgment. Paragraph 5 of the court's order authorized the County to enter upon Mr. Bonagofski's property to carry out an abatement of the nuisances located there. *CP at 18.*

## **E. ARGUMENT**

### **1. The Trial Court Had Sufficient Evidence to Support its Ruling.**

Mr. Bonagofski makes several arguments within his first assignment of error. Many of these are general attacks against the trial court's holding and do not relate to his actual assignment of error. The County will address each.

#### **a. Permit violations do not constitute nuisances.**

Mr. Bonagofski asserts that a simple technical permit violation does not constitute a nuisance. *Appellant's Brief at 13*. Because he cites no authority for this proposition this court should not consider it on appeal. *State v. Tracy*, 128 Wn.App. 388, 395 n.10, 115 P.3d 381 (2005); RAP 10.3(a)(5).

Regardless, the trial court's order is neither based solely upon permit violations by Mr. Bonagofski nor his failure to obtain a permit. The trial court found that the Mr. Bonagofski's means of storing solid waste created a hazard to public health and safety and ordered the abatement of the resulting nuisances in response. *Appellant's Supplemental CP at 17*. Mr. Bonagofski fails to contest these findings.

- b. State law exempts property owners from obtaining permits.

As with the prior argument, Mr. Bonagofski fails to substantiate his assertion that property owners are not subject to county permit requirements. He provides neither citation to state law nor to case law that establishes such a broad exemption. The argument should not be considered. *Tracy*, 128 Wn. App. at 395 n.10.

He also ignores the County's pleadings and the findings of the trial court. Both the County and the trial court identify a public health and safety hazard caused by Mr. Bonagofski's activities that is unconnected to the requirements of or obligation to obtain any permit. This hazard establishes the public nuisance and justifies the trial court's order of abatement.

- c. The County failed to establish that the condition of Mr. Bonagofski's property caused harm sufficient to warrant ordering abatement.

An actionable nuisance is defined by two statutory authorities, state law and county code. In RCW 7.48.120, state law defines nuisance as:

Nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures or endangers the comfort, repose, health or

safety of others, offends decency, or unlawfully interferes with, obstructs or tends to obstruct, or render dangerous for passage, any lake or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or in any way renders other persons insecure in life, or in the use of property.

RCW 7.48.130 defines a public nuisance as “one which affects equally the rights of an entire community or neighborhood, although the extent of the damage may be unequal.”

In addition, pursuant to RCW 36.32.120(10) counties may “declare by ordinance what shall be deemed a nuisance within the county...” and may “prevent, remove, and abate a nuisance at the expense of the parties creating, causing, or committing the nuisance...” Lewis County Ordinance 1181 and Lewis County Code 1.22.020(7) define “Nuisance” as:

“Premises containing visible accumulations of trash, junk, litter, boxes, discarded lumber, ashes, bottles, boxes, building materials which are not properly stored or neatly piled, cans, concrete, crates, empty barrels, dead animals or animal waste, glass, tires, mattresses or bedding, numerous pieces of broken or discarded furniture and furnishings, old appliances or equipment or

any parts thereof, iron or other scrap metal, packing cases or material, plaster, plastic, rags, wire, yard waste or debris, salvage materials or other similar materials, except that kept in garbage cans or containers maintained for regular collection. Nothing in this subsection shall prevent the temporary retention of waste in covered receptacles;... (iii) Any hulk, junk or abandoned vehicle, as defined in Ch. 8.05 LCC or Ch. 46 RCW, or any part thereof which is wrecked, inoperable or abandoned, or any disassembled trailer, mobile home or house trailer, or part thereof;... (vii) Illegal dumping including, but not limited to violations of state and local solid waste or litter regulations... (c) Any act or omission that is defined as a nuisance by state or county law, including but not limited to LCC 6.05.020 (prohibited activities of dogs), LCC 6.05.050 (dangerous animals), LCC 8.05.100 (abandoned vehicles), LCC 8.15.140 (solid waste), LCC 8.30.090 (litter), LCC 8.35.010 (nuisances on highways), LCC 8.40.040 & -.270\* (on-site sewage), LCC 8.45.030 (solid waste), LCC 15.25.110 (mobile homes), and LCC 15.45.500 (storm water runoff).” (Exhibit A)

The County’s complaint alleged Mr. Bonagofski’s property met both these definitions. *Appellant’s Supplemental CP* at 41-42. And the facts before the trial court supported these allegations.

In his affidavit, Mr. Cavinder, the County's Code Compliance Officer, recounts the history of nuisances existing on Mr. Bonagofski's property. He concludes by discussing the condition of the property at the time he gave the statement. He states that large amounts of solid waste existed on the property in late October 2005. *Respondent's Supplemental CP at 72.* The amount of waste bottles, plastics and cans had doubled in the past month, he averred, and Mr. Bonagofski had brought new waste items on to the property since Mr. Cavinder's September 26, 2005 inspection. In addition to plastic bottles and cans, Mr. Cavinder found batteries, car parts, cardboard, and hulk vehicles visible on the property in at that time. *Id.*

The affidavit of the County's Environmental Health Specialist, Steve Garrett, supports Mr. Cavinder's findings. In his affidavit, he enumerates his findings during several visits to the property during 2004 and 2005. *Id. at 152.* In May 2005, Mr. Garrett found Mr. Bonagofski had failed to complete the tasks required by the correction agreement Mr. Bonagofski entered into in 2004. His property still contained aluminum cans, cardboard, and hulk vehicles. *Id.*



In August, Mr. Garrett observed on the property used plastic beverage bottles, used aluminum cans, scrap metal, newspaper, an exposed battery, tires, various used household appliances, furniture, and plastic oil containers that contained oil. *Id.*

In October, the property was no cleaner. Mr. Garrett opines that the condition of the property in May and October “creates a harborage for rodents and vectors, such as flies and mosquitoes, and poses an environmental contamination risk.” *Id. at 153.* He notes that he has received complaints from Mr. Bonagofski’s neighbors of rodents coming from Mr. Bonagofski’s property onto their land. “The presence of rodents,” Mr. Garrett observes, “poses a serious health risk to the neighbors and the public.” *Id.* He expects that “in the foreseeable future Mr. Bonagofski will progressively accumulate a vast quantity of recyclables on his property that will pose an ever more serious risk to public health.” *Id. at 154.*

Mr. Garrett’s concern that the condition of Mr. Bonagofski’s property promotes the spread of rodents to other properties is not a hypothetical one, as evidenced by the statements of Jieris Saade. Mr. Saade owns land adjoining Mr. Bonagofski’s property. In his statement, Mr. Saade states that, “... the condition of Mr.

Bonagofski's property has caused a rodent problem on my property." *Respondent's Supplemental CP* at 160. His description of the property's condition corroborates those given by Mr. Cavinder and Mr. Garrett. Mr. Saade notes that he has become used to seeing rodent feces scattered around his property and that the rodent presence substantially decreased after the County's prior abatement of Mr. Bonagofski's property. *Id.* at 161-62.

Tony Barrett is the Deputy Health Officer for Lewis County. In his statement, he presents similar descriptions of Mr. Bonagofski's property as those given by other affidants. He also echoes Mr. Garrett's assessment of the health risk posed by the property:

"As rodents are known to harbor and transmit human diseases, the likely presence of rodents within this unlawful solid waste site poses an immediate and serious threat to the nearby occupants and to public health and safety generally. In addition, the presence of unprotected batteries hulks, and old oil containers on the ground, present a risk of environmental pollution. Although I did not see any signs of spillage on the property, the improper storage of these items creates a real risk of soil and water contamination." *Id.* at 156.

Mr. Barrett also notes Mr. Bonagofski's violation of state law and county code. He concludes that "these violations constitute an immediate and serious threat to the health and safety of the present occupants and nearby residents." *Respondent's Supplemental CP at 158.*

In contrast, Mr. Bonagofski presented to the trial court no documentary, photographic, or oral evidence to dispute the County's evidence or place its truth in doubt. Mr. Bonagofski did not allege that the junk or abandoned vehicles no longer were present on his property, nor did he allege that there were no longer empty bottles, scrap cardboard, exposed batteries, oil containers, auto parts and tires on the land. In fact, at the summary judgment hearing, he acknowledged that "there's a problem" and that waste exists on his property to some extent or another. *Report of proceedings at 21.*

Finally, the photographs attached to the filed statement of Mr. Cavinder clearly establish the longevity and extent of the nuisance on Mr. Bonagofski's property *CP at 74-150 (Exhibit B)*<sup>1</sup>. These photographs stand as independent evidence that the

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<sup>1</sup> Because the Clerks Papers contain only black and white copies of the photographs, color copies of the photographs are attached in Exhibit B.

property met the definitions of “nuisance” in both the state statute and county code. Along with the affidavits of County staff, the photographs establish that Mr. Bonagofski’s property constituted a nuisance not unlike that described by this court in *City of Bremerton v. Sesko*, 100 Wn. App. 158, 160, 995 P.2d 1257, *review denied*, 141 Wash.2d 1031, 11 P.3d 825 (2000):

“According to the trial court’s findings, the Arsenal Way property is covered with vehicles, heavy equipment, litter, vending machines, portable toilets, appliances, lumber scraps, metal scraps, vehicle parts, boats, metal tanks, wooden pallets, paint cans, litter debris and various other objects which are not associated with residential use of the property.”

In that case, this court held that properties maintained as junkyards were nuisances and subject to unconditional abatement. *City of Bremerton*, 100 Wn. App. at 164. The trial court here did not error by ruling similarly as there was no factual dispute that Mr. Bonagofski’s property was of similar character to the Sesko property and subject to the same remedy.

Independently, the trial court’s order is supported by the County’s evidence of per se violations of Lewis County codes. Mr. Bonagofski failed to address this evidence at the trial court or now

in his brief. In its complaint, the County plead violations of Lewis County Code (LCC) 8.45.040-.050 and LCC 8.15.040 (exhibit C), which regard the storing of solid waste without a permit and the dumping of solid waste, respectively. Both code chapters designate violations of their provisions as nuisances and authorize the County to seek a court order of abatement in response. See LCC 8.15.140 and LCC 8.45.130(4)(e) (exhibit C).

In contrast to the requirements of RCW 7.48, these sections do not require proof of community harm to establish that a nuisance exists. The presence of a nuisance is predicated simply on a violation of the requirements of the chapters. In this case, Mr. Barrett's affidavit achieves this end. His statements establish that Mr. Bonagofski violated LCC 8.45 and 8.15 by failing to obtain a permit for storing solid waste, improperly storing the waste, and for dumping solid waste on to land that is not a designated disposal site. The trial court's ruling on summary judgment was correct based on this evidence alone.

- d. The County failed to show an unreasonable interference with the use and enjoyment of property.

While a plaintiff must show an unreasonable interference with the use and enjoyment of property to establish a nuisance, the boundaries of this interference are set by statute. *Wallace v. Lewis*

*County*, 134 Wn. App. 1, 137 P.3d 101 (2006). As previously noted, RCW 7.48.130 defines a nuisance as performing an act that “annoys, injures or endangers the comfort, repose, health or safety of others...” Here, the County established that the community was endangered by Mr. Bonagofski’s actions because they created a risk of environmental contamination and lead to the spread of disease carriers such as rodents and mosquitoes.

In addition, Mr. Bonagofski’s violation of County health and safety codes constituted a per se unreasonable endangerment of others’ property. Engaging in a profession that contravenes law prohibiting the same constitutes a nuisance per se. *Kitsap County v. Kev, Inc.*, 106 Wn.2d 135, 138-139, 720 P.2d 818 (1986). Because a per se nuisance emanates from legally prohibited conduct, the inquiry into whether an unreasonable interference with property occurred is unnecessary. *Tiegs v. Boise Cascade Corp.* 83 Wn.App. 411, 417, 922 P.2d 115, (1996).

In *Tiegs*, the defendant complained that the trial court’s instruction to the jury that violation of a water pollution control regulation constituted a nuisance was an improper statement of the law. The defendants argued that the trial court’s instruction should have informed the jury that the plaintiff had an obligation to prove

that defendants' use of its property unreasonably interfered with their use. *Tiegs*, 83 Wn.App. at 417. Division Three of this court disagreed. The court quoted *Branch v. Western Petroleum, Inc.*, 657 P.2d 267 (Utah 1982) to support its ruling:

“When the conditions giving rise to a nuisance are also a violation of statutory prohibition, those conditions constitute a nuisance per se, and the issue of the reasonableness of the defendant's conduct and the weighing of the relative interests of the plaintiff and defendant is precluded because the Legislature has, in effect, already struck the balance in favor of the innocent party.

Defendant's violation... removed the issue of the reasonableness of its conduct compared with the nature of the injury inflicted from consideration in this case. The declaration of the Legislature is conclusive, and its determination will not be second guessed. The result for practical purposes is the same as strict liability.” *Tiegs*, 83 Wn.App. at 418.

Similarly, the County was not obligated to establish that Mr. Bonagofski's actions unreasonably affected neighboring properties. If those actions violated County health and safety code, they constituted acts which the legislative authority of the County had already deemed unreasonably hazardous to the citizens of the

County. Since Mr. Bonagofski did not challenge the County's allegations that he violated LCC 8.45, 8.15 and 8.05, the trial court had sufficient grounds to enter a summary judgment order.

- e. The County's motion was based upon evidence obtained through an illegal search.

Mr. Bonagofski fails to demonstrate how the County illegally obtained its evidence of his nuisances. Neither before the trial court nor to this court has he stated that he withheld permission for entry upon his land, or that County staff accessed constitutionally protected areas of his land. Not all entry upon private land by the government is illegal. A property search pursuant to a criminal warrant, as the County performed in September 2004, is an allowable search. *State v. Wallin*, 125 Wn.App. 648, 654, 105 P.3d 1037, review denied 155 Wash.2d 1012, 122 P.3d 186 (2005). In addition, public officials may enter land if given consent to do so, or if they remain in areas of the curtilage that are impliedly open, such as access routes to the house. *Thurston County Rental Owners Ass'n v. Thurston County*, 85 Wn.App. 171, 183, 931 P.2d 208 (1997); *State v. Seagull*, 95 Wash.2d 898, 632 P.2d 44 (1981)

As the photographs of Mr. Bonagofski's property indicate, the County collected its evidence with Mr. Bonagofski's consent, from observations gained from the public road, or by observations



of property in open view. Thus, the trial court's ruling was not based on illegally obtained evidence.

**2. The trial court did not unreasonably deny a discovery request.**

Decisions on discovery requests are within the trial court's discretion and will not be disturbed on appeal unless they are manifestly unreasonable or based on untenable grounds. *Doe v. Puget Sound Blood Ctr.*, 117 Wash.2d 772, 777, 819 P.2d 370 (1991). Here, the court did not, as Mr. Bonagofski claims, deny a request for discovery. Mr. Bonagofski did not, in fact, make a request for discovery or move the court for an order to compel discovery. Rather, he contingently argued that the County was either "withholding the documents or they have no documents." *CP at 6*; *See also, Report of Proceedings at 20*. In his motion and before the trial court, Mr. Bonagofski referenced the documents not to seek their production, but to establish that the County had made admissions by omission and that it was acting without legal authority. Thus, the trial court was never called upon to rule on whether Mr. Bonagofski was denied discovery.

Even if one can construe Mr. Bonagofski's motion and argument as seeking production of documents, he did not present

the trial court with a discovery issue as he acknowledged that the records might not exist. There was, again, no reason for the court to compel discovery.

Moreover, Mr. Bonagofski did not request the records according to CR 26, instead making requests under the Public Records Act. While a litigant is not precluded from using the Public Records Act to obtain discovery documents and trial courts may, in certain circumstances, apply CR 26 protections to documents requested under the Act, Mr. Bonagofski failed to indicate to the trial court how the requested documents were relevant to the controversy. *Bellevue John Does 1-11 v. Bellevue School District 405* 129 Wn.App. 832, 863, 120 P.3d 616, (2005); *O'Connor v. Washington State Dept. of Social and Health Services*, 143 Wash.2d 895, 910, 25 P.3d 426, (2001). He has continued to fail to do so on appeal. Instead, he merely argues that “the Court entered an order denying [his] requests for discovery without even a cursory examination to determine if they were relevant.” *Appellant’s Brief* at 24-25. But Mr. Bonagofski fails to demonstrate that the trial court hastily exercised its discretion. Contrary to his assertion, the trial court stated in its ruling on the County’s motion

for summary judgment that it considered the arguments and pleading of both parties. *Appellant's Supplemental CP* at 16.

If Mr. Bonagofski believed that the County was withholding the documents, he was not without recourse. The Public Records Act contains provisions for enforcement of its mandates, including compelling the release of public records. RCW 42.56.550. Mr. Bonagofski did not avail himself of these provisions. He did not move the court for a show cause hearing. And he provides no authority to this court now that the trial court was obligated to use the powers granted it under CR 26 to supplant those provisions. Without any showing of relevancy of the requested records, it was within the discretion of the trial court to leave Mr. Bonagofski with the option to compel release of the records through the provisions of the Act under which he sought them. *Quinn Const. Co., L.L.C. v. King County Fire Protection Dist. No. 26*, 111 Wn.App. 19, 33, 44 P.3d 865 (2002) (when appellant filed public disclosure act request for records, proper response for trial court was to conduct, at appellant's request, a RCW 42.17 show cause hearing).

Regardless, the County provided all the requested records it possessed. See Exhibit D.

**3. The trial court did not order an unreasonable seizure by ordering abatement of Mr. Bonagofski's property.**

Mr. Bonagofski's third assignment of error appears to be directed at a court order providing an ongoing right to entry to conduct inspections. This is not the case with the trial court's order here. The trial court's order only authorizes entry by the County for abatement of Mr. Bonagofski's property. It does not provide a continual right of entry to the County.

Moreover, the trial court's order was "in accordance with a lawful statutory scheme and [it] conformed... to the requirements of that scheme." *Exendine v. City of Sammamish*, No. C05-436P, 2006 U.S. Dist. 2006 WL 2927726, at 3 (W.D.Wash., Oct. 11, 2006). Thus, any seizure pursuant to that order did not contravene the Fourth Amendment. *Id.* See also, *Schneider v. County of San Diego*, 28 F.3d 89, 92 (9<sup>th</sup> Cir 1994).

Regardless, the trial court's order of abatement was consistent with the requirements of the Fourth Amendment. The order emanated from RCW 7.48, which provides "legislative authorization for a court to issue a warrant on less than probable cause." *Seattle v. Mcready*, 123 Wash.2d 260, 278 (1999). And the abatement warrant issued was based "on specific evidence of

an existing violation.” *Seattle v. Leach*, 29 Wn. App. 81 (citing *Marshall v. Barlow’s Inc.* 436 U.S. 307, 87 S.Ct. 1737 (1967)). The trial court had before it both photographic and testimonial evidence of the continuing nuisance on Mr. Bonagofski’s property. Thus, the trial court had the statutory authority and a sufficient basis to issue the order.

Mr. Bonagofski also argues that the warrant was not sufficiently specific. He cites no authority in support of his argument and does not describe how the warrant was vague. His argument should be disregarded for lack of support. *Tracy*, 128 Wn. App. at 395 n.10; RAP 10.3(a)(5).

The order was not vague. While the trial court’s actual authorization for the county to enter on Mr. Bonagofski’s property and abate the “nuisances” did not define that term, other sections of the order specified the items to be abated. *CP* at 18. In paragraph three of the trial court’s order, the Court directed Mr. Bonagofski to remove from his property “all solid wastes, as defined by LCC 8.45.040, that poses [sic] a health risk and all hazardous waste on the property...” *Id.* The referenced definition, which is identical to the definition in the state’s Solid Waste Handling Standards, WAC 173-350-100, and the associated definition of “recyclable

materials,” are sufficiently specific to inform the County and Mr. Bonagofski of the order’s scope. (Exhibit E).

The second type of nuisance the order referenced was hulk vehicles. In respect to these items, the order specifically identified by license plate number the vehicles that the County had authority to abate. *CP* at 18. This left little room for confusion as to the property to be seized.

#### **F. CONCLUSION**

For the foregoing reasons, the State respectfully requests that the trial court’s summary judgment order be affirmed and Appellant’s appeal be denied.

Respectfully submitted this \_\_\_\_ day of December, 2006.

JEREMY RANDOLPH  
Lewis County Prosecuting Attorney

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STATE OF WASHINGTON

BY  DEPUTY

COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

Victor Bonagofski,

Appellant,

v.

LEWIS COUNTY,

Respondent.

NO. 34453-8-II

CERTIFICATE OF MAIL

I hereby certify that on the 18<sup>th</sup> day of December, 2006, I deposited in the United States mail, with postage prepaid, copies of the following documents:


1. Amended Response to Appellant's Opening Brief; and
2. Certificate of Mailing.

for delivery to the following individuals at their respective addresses:

Victor Bonagofski  
1303 Reynolds Rd  
Centralia WA 98531

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 18<sup>th</sup> day of December, 2006, at Chehalis, Lewis County, Washington.

  
JANELLE L. KAMBICH

# EXHIBIT A



## **Chapter 1.22**

### **PUBLIC NUISANCES**

#### **Sections:**

- 1.22.010 Purpose.
- 1.22.020 Definitions.
- 1.22.030 Abatement by the county.
- 1.22.040 Removal of property and/or solid waste placed onto public access.
- 1.22.050 Additional enforcement procedures and nuisances.

#### **1.22.010 Purpose.**

This chapter provides the conditions which constitute a public nuisance, and provides for abatement where premises, structures, vehicles, or portions thereof are found to be unfit for human habitation, or unfit for other uses, due to dilapidation, disrepair, structural defects, defects increasing the hazards of fire, accidents or other calamities, inadequate ventilation and uncleanliness, inadequate light or sanitary facilities, inadequate drainage, or due to other conditions which are inimical to the health and welfare of the residents of Lewis County, or any violation under the Lewis County Code, declared or defined as a public nuisance. [Ord. 1181 §1, 2003]

#### **1.22.20 Definitions.**

As used in this chapter, unless a different meaning is plainly required:

(1) "Abate" means to repair, replace, remove, destroy or otherwise remedy a condition which constitutes a nuisance under this chapter or under any chapter of the County Code by such means, in such a manner, and to such an extent as the director determines is necessary in the interest of the general health, safety and welfare of the community.

(2) "Act" means doing or performing something.

(3) "Building" means any constructed structure consisting of a minimum of three sides and a roof and the premises thereto.

(4) "Director" means the director of the department of community development, the director of the department of public works, or the director of the department of health and social services, or their authorized designee, or any designee of the board of county commissioners or board of health, empowered to enforce a county or board of health ordinance or regulation.

(5) "Department" means the department of community development, the department of public works, or the department of health and social services.

(6) "Development" means the erection, alteration, enlargement, demolition, maintenance or use of any structure or the alteration or use of any land above, at or below ground or water level, and all acts authorized by a county regulation.

(7) "Nuisance," "violation" or "nuisance violation" means:

(a) Doing an act, omitting to perform any act or duty, or permitting or allowing any act or omission, which significantly affects, injures, or endangers the comfort, repose, health or safety of others, is unreasonably offensive to the senses, or obstructs or interferes with the free use of property so as to interfere with or disrupt the free use of that property by any lawful owner or occupant; or

(b) The existence of any of the following conditions:

(i) Premises containing visible accumulations of trash, junk, litter, boxes, discarded lumber, ashes, bottles, boxes, building materials which are not properly stored or neatly piled, cans, concrete, crates, empty barrels, dead animals or animal waste, glass, tires, mattresses or bedding, numerous pieces of broken or discarded furniture and furnishings, old appliances or equipment or any parts thereof, iron or other scrap metal, packing cases or material,

plaster, plastic, rags, wire, yard waste or debris, salvage materials or other similar materials, except that kept in garbage cans or containers maintained for regular collection. Nothing in this subsection shall prevent the temporary retention of waste in covered receptacles;

(ii) Dangerous structures including, but not limited to, any dangerous, decaying, unkempt, falling or damaged dwelling, or other structure, or as defined under Ch. 15.05 LCC and the Uniform Building Code;

(iii) Any hulk, junk or abandoned vehicle, as defined in Ch. 8.05 LCC or Ch. 46 RCW, or any part thereof which is wrecked, inoperable or abandoned, or any disassembled trailer, mobile home or house trailer, or part thereof;

(iv) Vehicle sales or repair lots or the storing of extensively damaged vehicles if the vehicles are visible from public property or a public right of way and the vehicles are not stored or parked upon a driveway or in connection with a state or locally licensed scrap processor or licensed vehicle sales, repair, hauling, dismantling, or towing business or are not part of land use or development approved under the County Code. "Extensive damage" includes but is not limited to broken windshields and missing tires. A "driveway" is defined as the roadway leading from the public right of way to a garage, covered parking area, or home;

(v) Attractive nuisances, as defined as any nuisance in this subsection which is detrimental to children, whether in or on a building, on the premises of a building, or upon an unoccupied lot, which is left in any place exposed or accessible to children including, but not limited to, unused or abandoned refrigerators, freezers, or other large appliances or equipment or any parts thereof; abandoned motor vehicles; any structurally unsound or unsafe fence or edifice; any unsecured or

abandoned excavation, pit, well, cistern, storage tank or shaft; and any lumber, trash, debris or vegetation which may prove a hazard for minors;

(vi) Obstructions to the public right-of-way including, but not limited to, use of property abutting a public street or sidewalk or use of a public street or sidewalk which causes any obstruction to traffic or to open access to the streets or sidewalks. This subsection shall not apply to events, parades, or the use of the streets or public rights-of-way when authorized by the county. This section includes the existence of drainage onto or over any sidewalk, street or public right-of-way, and the existence of any debris or plant growth on sidewalks adjacent to any property, and any personal property and/or solid waste that has been placed onto a public right-of-way pursuant to a court-ordered eviction per Title 59 RCW which has not been removed after twenty-four hours;

(vii) Illegal dumping including, but not limited to violations of state and local solid waste or litter regulations, and dumping of any type by any person on public or private property not designated as a legal dump site;

(viii) Dumping in waterways including, but not limited to, dumping, depositing, placing or leaving of any garbage, ashes, debris, gravel, earth, rock, stone or other material upon the banks, channels, beds or bars of any navigable water, or the felling of any tree or trees, so that the same shall in whole or in part project within the high water bank of any navigable watercourse, or the casting, placing, depositing or leaving of any logs, roots, snags, stumps or brush upon the banks or in the bed or channel of any navigable watercourse, unless otherwise approved by the appropriate governmental agency;

(ix) Any unwholesome or offensive chemical stored in such a manner

as to create a substantial risk of injury to public health;

(x) Any pit, basin, hole, mine, well, or other excavation which is unguarded and dangerous to life;

(xi) Any fence or similar structure that is in such disrepair so as to be in danger of collapsing or falling and causing a danger to persons;

(xii) Any combustible or explosive substance or material stored in such manner as to create a substantial risk of combustion or spread of fire; and

(c) Any act or omission that is defined as a nuisance by state or county law, including but not limited to LCC 6.05.020 (prohibited activities of dogs), LCC 6.05.050 (dangerous animals), LCC 8.05.100 (abandoned vehicles), LCC 8.15.140 (solid waste), LCC 8.30.090 (litter), LCC 8.35.010 (nuisances on highways), LCC 8.40.040 & -.270\* (on-site sewage), LCC 8.45.030 (solid waste), LCC 15.25.110 (mobile homes), and LCC 15.45.500 (storm water runoff). (\*Codifier's note: scrivener's error listed subsection as "-.279")

(d) Notwithstanding the above subsections, all conditions, actions, omissions, or the permission of any actions or omissions meeting the requirements and provisions described in the Right to Farm Ordinance, LCC 17.40, as hereafter amended, or that are allowable under a state or local license or permit shall not constitute nuisance under this chapter.

(8) "Omission" means a failure to act.

(9) "Person" means any individual, firm, association, partnership, corporation or any entity, public or private.

(10) "Person responsible for the violation" means any person who has an interest in or resides upon or occupies the property where the alleged violation is occurring, whether as owner, tenant, occupant, trustee or otherwise.

(11) "premises" means a building or part of a building and the appurtenances thereto, grounds, and facilities of the building.

(12) "Vehicle" means every device capable of being moved upon a highway and in, upon, or by which any person or property is or may be transported or drawn upon a highway. Motorcycles shall be considered vehicles for the purposes of this chapter. Mopeds and bicycles shall not be considered vehicles for the purposes of this chapter.

(13) "Vehicle sales or repair lot" means a parcel(s) whereupon vehicle dealer or manufacture business or vehicle repair business is conducted which is regulated by the provisions of Title 46 RCW, and is subject to local land use regulation by a department.

(14) "Violation" means a violation that constitutes a nuisance under this chapter or under any chapter of the Lewis County Code. Each day or portion of a day during which a violation occurs or exists is a separate violation. [Ord. 1181 §1, 2003]

#### **1.22.030 Abatement by the county.**

(1) The county may seek to abate and permanently enjoin a condition which constitutes a nuisance under this chapter or under any chapter of the County Code, and, using any lawful means, may enter upon the subject property and remove or correct the condition that is subject to such abatement or injunction. The prosecuting attorneys office for the county may seek such judicial process as it deems necessary to effect the removal or correction of such condition.

(2) Summary Abatement. Whenever any nuisance causes a condition, the continued existence of which constitutes an immediate threat to the public health, safety, or welfare, or to the environment, the county may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it, shall be given to the person responsible for the violation as soon as reasonably possible. If

the person responsible for the violation is a tenant, notice of such abatement shall also be given to the landlord or owner of the property where the violation is occurring. No right of action shall lie against the county or its agents, officers, or employees for actions reasonably taken to prevent or cure any such immediate threats, but neither shall the county be entitled to recover any costs incurred for summary abatement, prior to the time that actual notice of same is provided to the person responsible for the violation.

(3) Recovery of Costs and Expenses.

(a) The costs of correcting a nuisance under this chapter, or under any chapter of the County Code, which is the subject of a warrant of abatement or of a contempt order for violation of a permanent injunction against such nuisance shall be billed to the person responsible for the nuisance and/or the owner, lessor, tenant, or any other person entitled to control the subject property.

(b) The costs of correction shall include "incidental expenses", which may include, but are not limited to, personnel costs, both direct and indirect and including attorney's fees; costs incurred in documenting the violation; towing/hauling, storage, and removal/disposal expenses; cost associated with service and enforcement of warrants, actual expenses and costs of the county in preparing notices, specifications, and contracts associated with the abatement and in accomplishing and/or contracting and inspecting the work; the costs of any required printing and mailing, and interest at the rate of ten percent (10%) per annum on the costs of abatement incurred by the county.

(c) Costs of correction shall become due and payable to the county treasurer within fifteen calendar days of the date of mailing the billing for abatement.

(d) All costs of correction assessed by the county create a joint and several

personal obligation in all persons subject to a warrant of abatement or of a contempt order for violation of a permanent injunction against such nuisance.

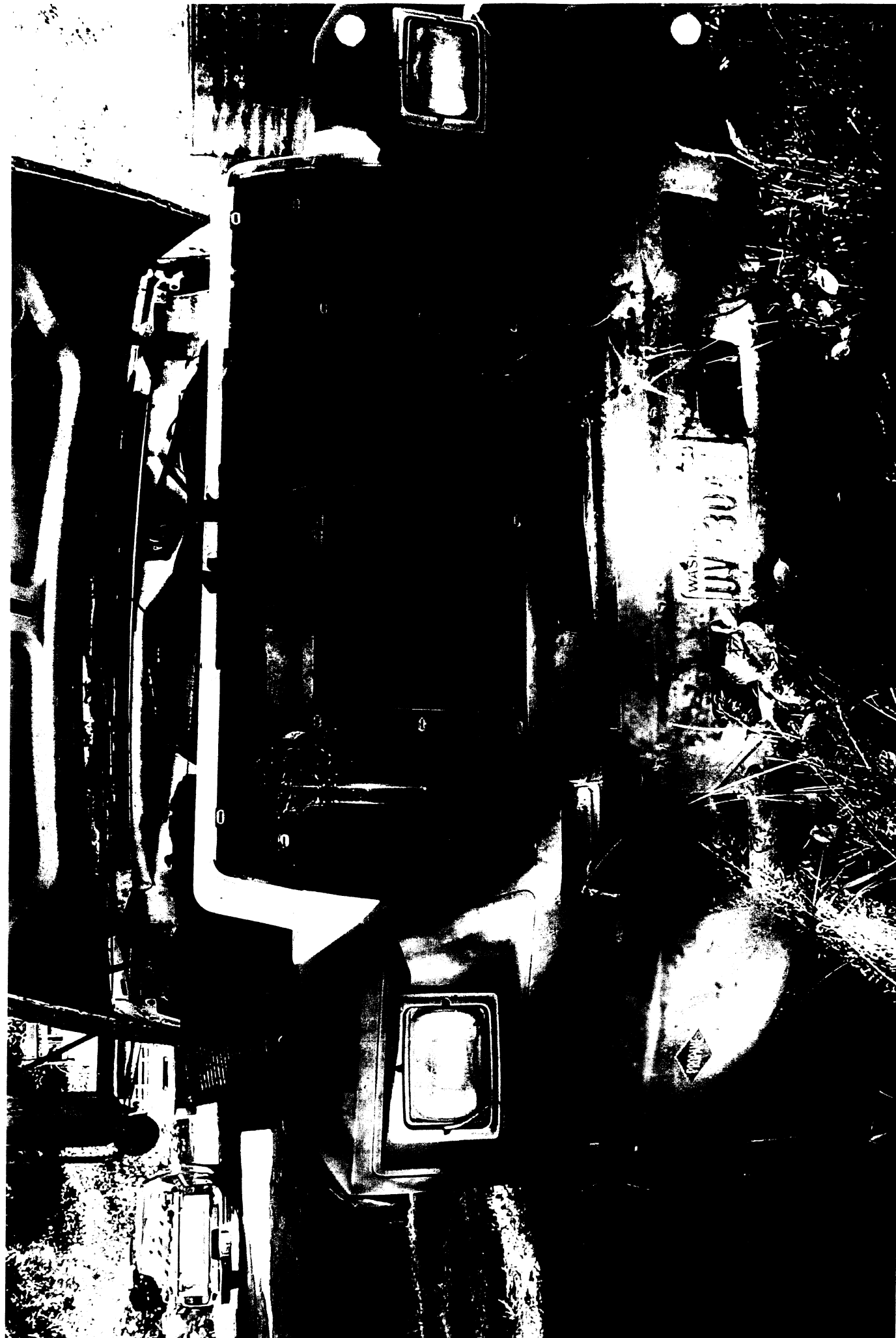
(e) All such costs and expenses shall constitute a lien against the affected property, as set forth in subsection (5) of this section.

(4) Interference. Any person who knowingly hinders, delays or obstructs any county employee acting on direction of the director and in furtherance of a court order in the discharge of the county employee's official powers or duties in abating a nuisance or correcting a violation of a permanent injunction under this chapter or under any chapter of the County Code, shall be guilty of a misdemeanor punishable by imprisonment not exceeding ninety days and/or a fine not exceeding \$1,000.00. In addition, any such person knowingly hinders, delays or obstructs any county employee in furtherance of said duties shall be liable for incidental expenses to the county arising from such, including but not limited to, personnel costs, both direct and indirect and including attorney's fees; costs incurred in documenting the violation; all actual expenses and costs of the county in remediation of such hindrance, and delay or obstruction associated with the abatement or injunctive action. All such costs and expenses shall constitute a lien against the real property of said person, as set forth in subsection (5) of this section.

(5) Lien - Authorized. The county shall have a lien for any monetary penalty imposed, the cost of any abatement proceedings under this chapter or under any chapter of the County Code, and all other related costs against the real property on which the monetary penalty was imposed or any of the work of abatement was performed. The lien shall run with the land, but shall be subordinate to all previously existing special assessment liens imposed on the same property and shall be superior to

# EXHIBIT B

























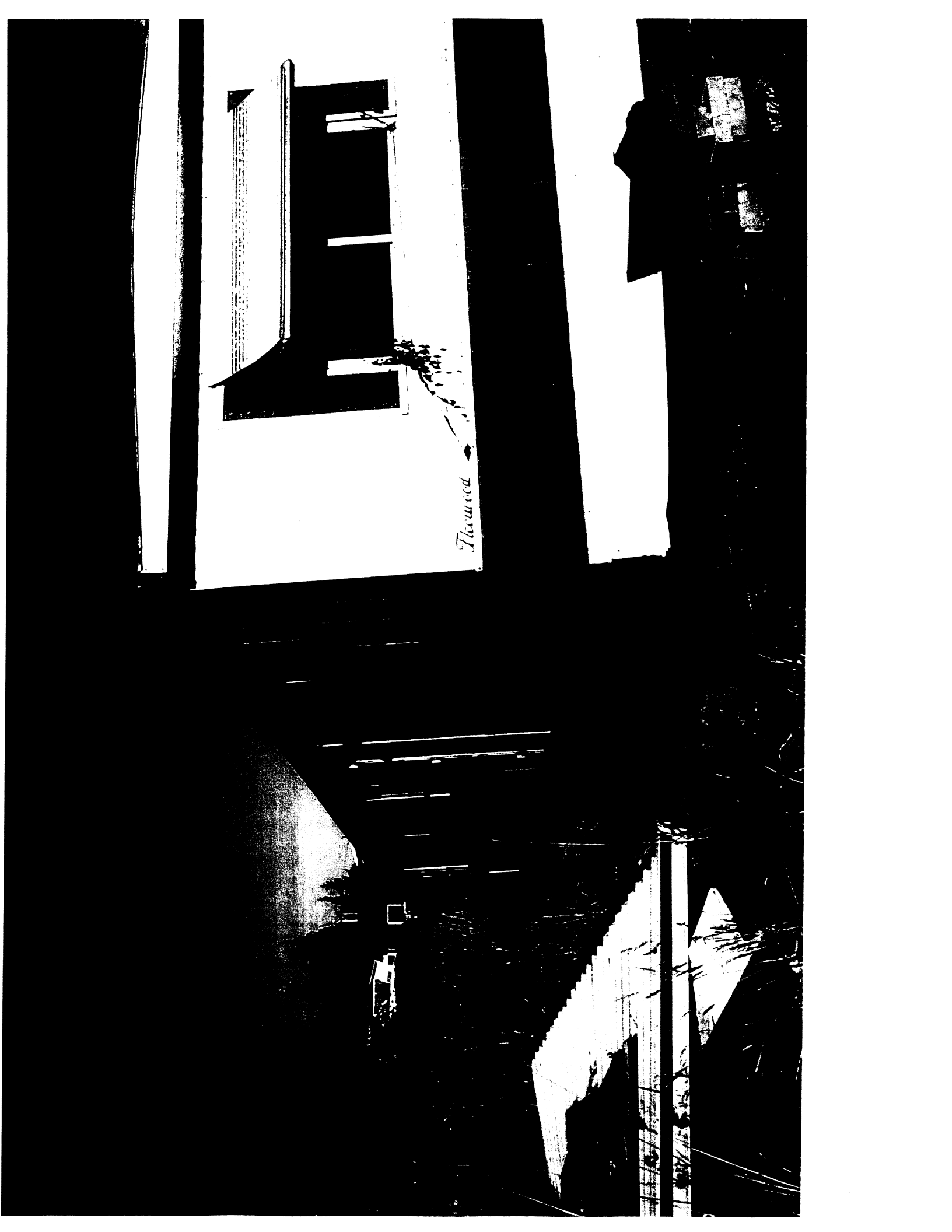


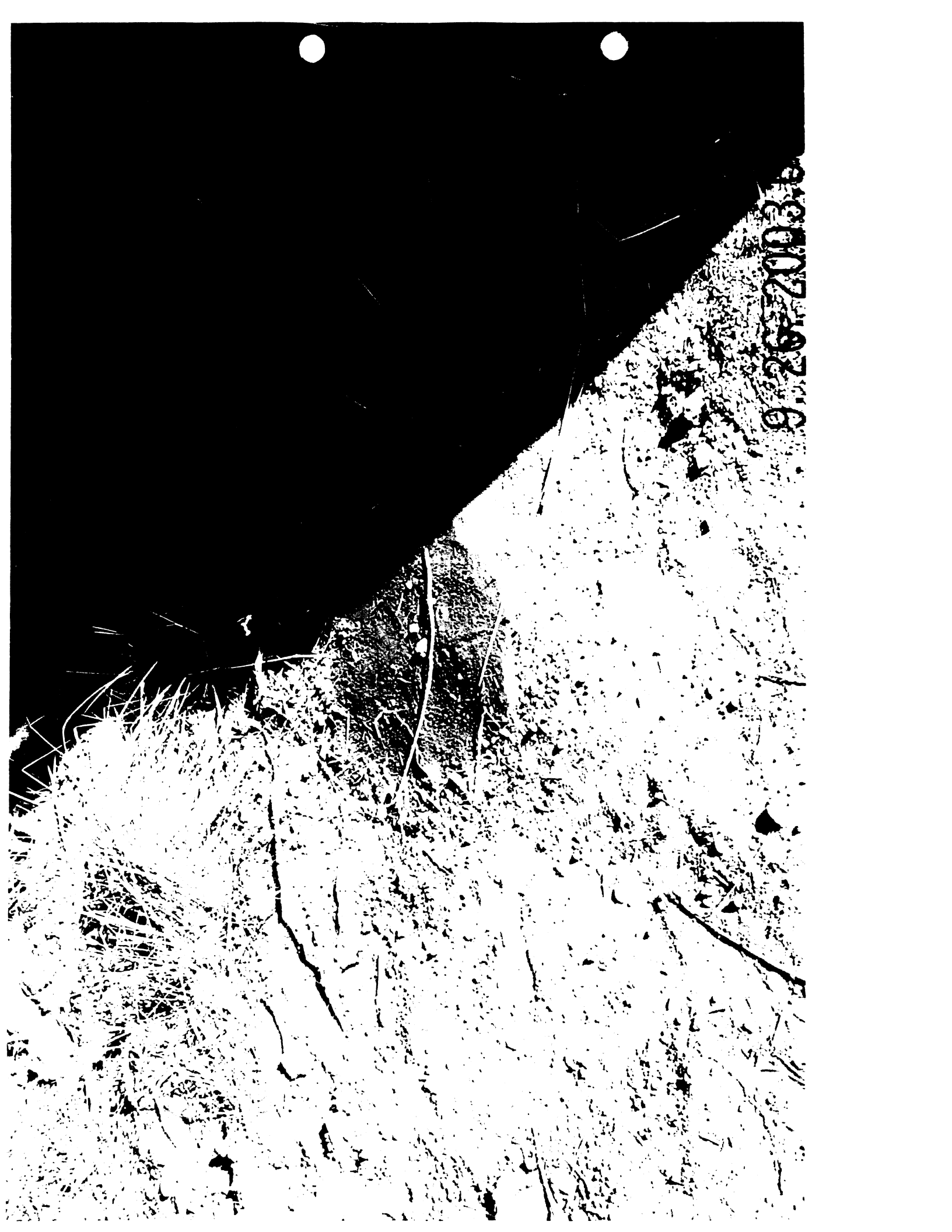




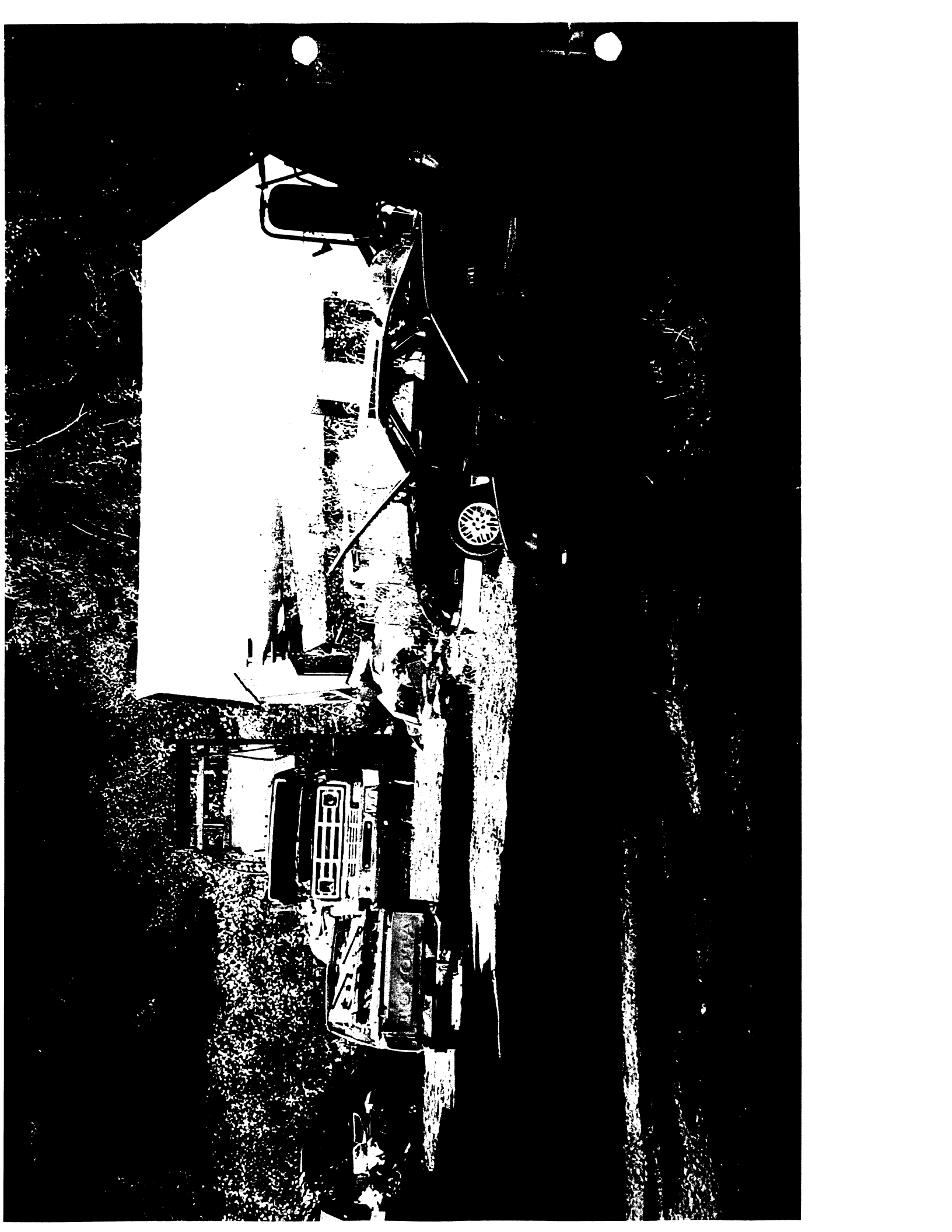








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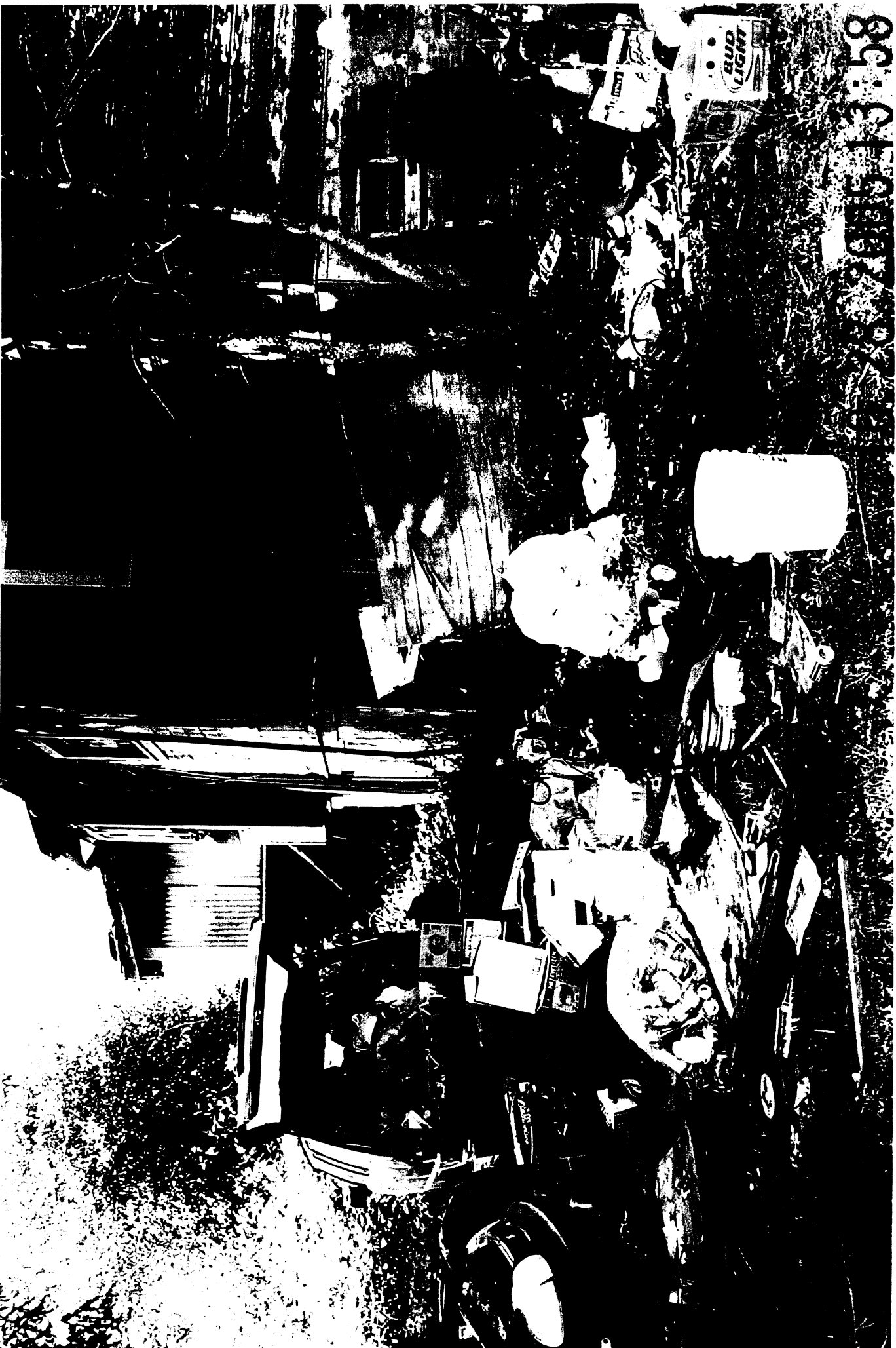


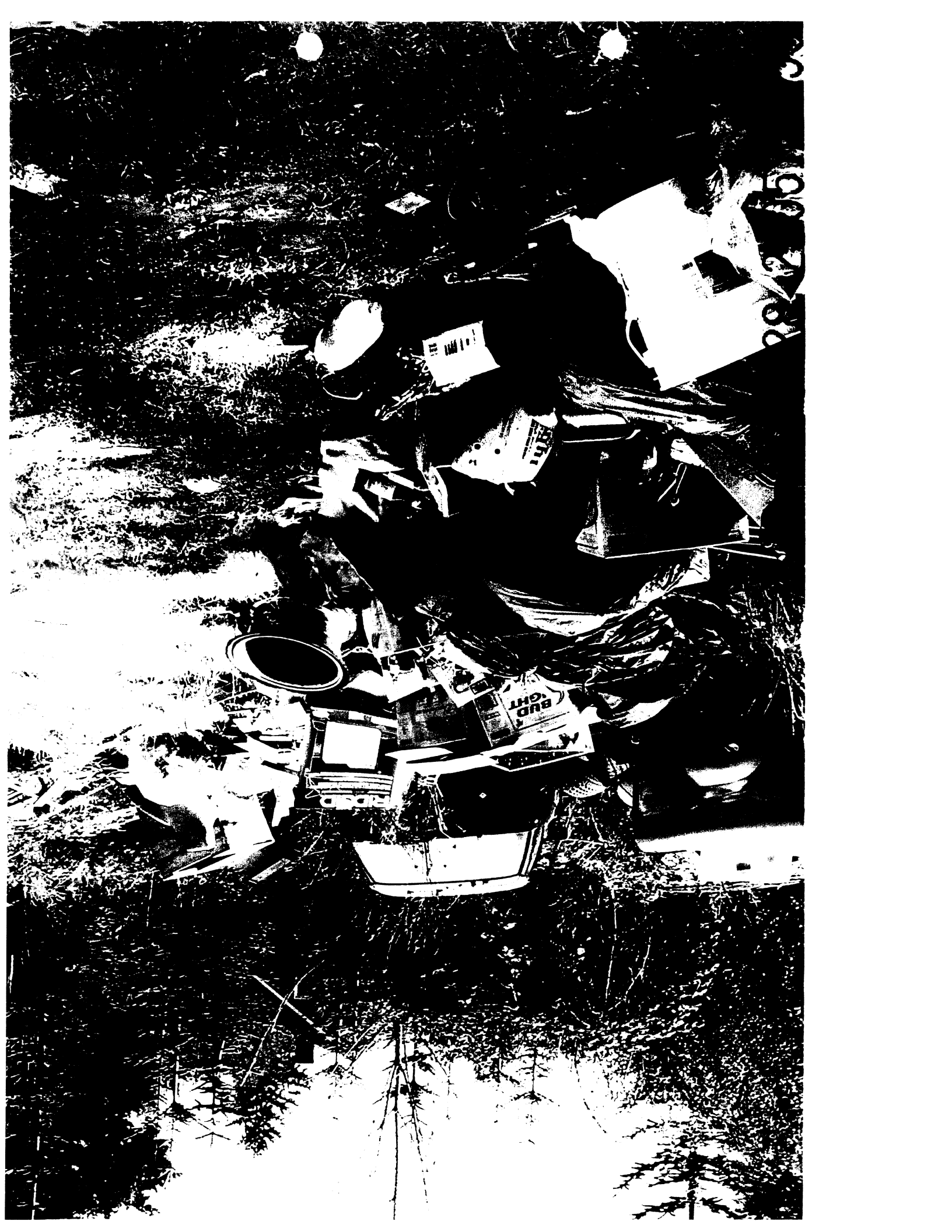


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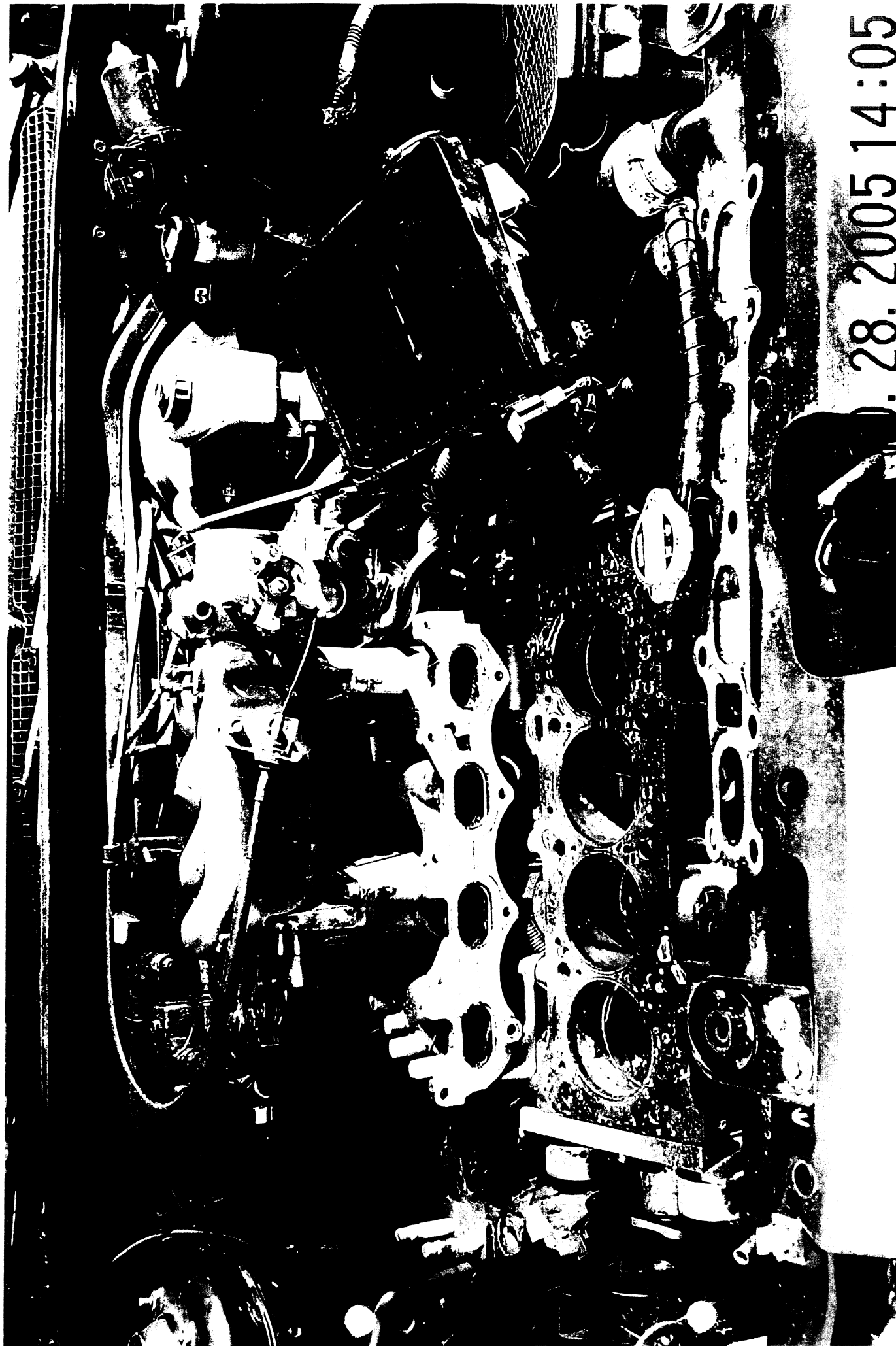




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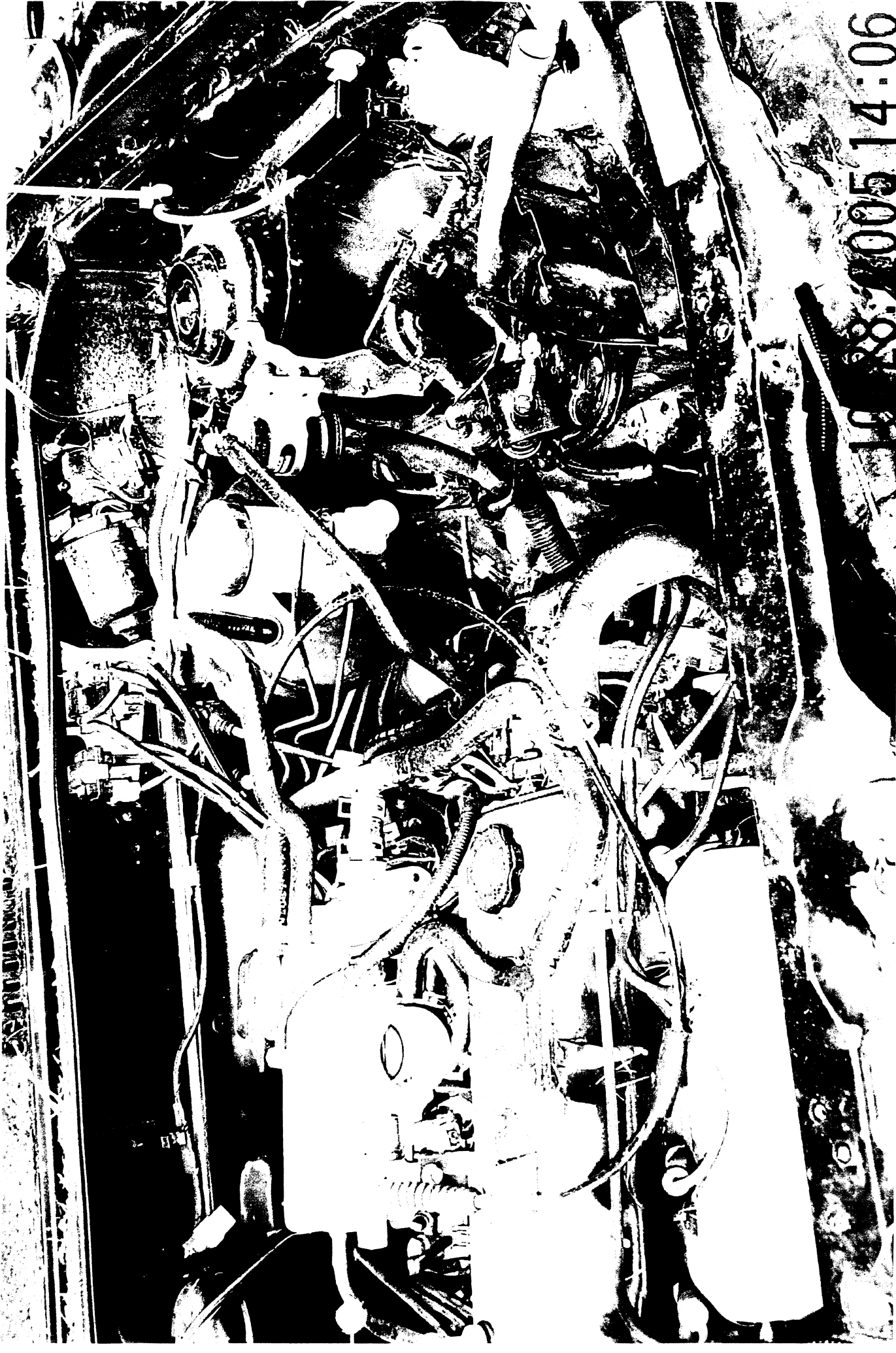




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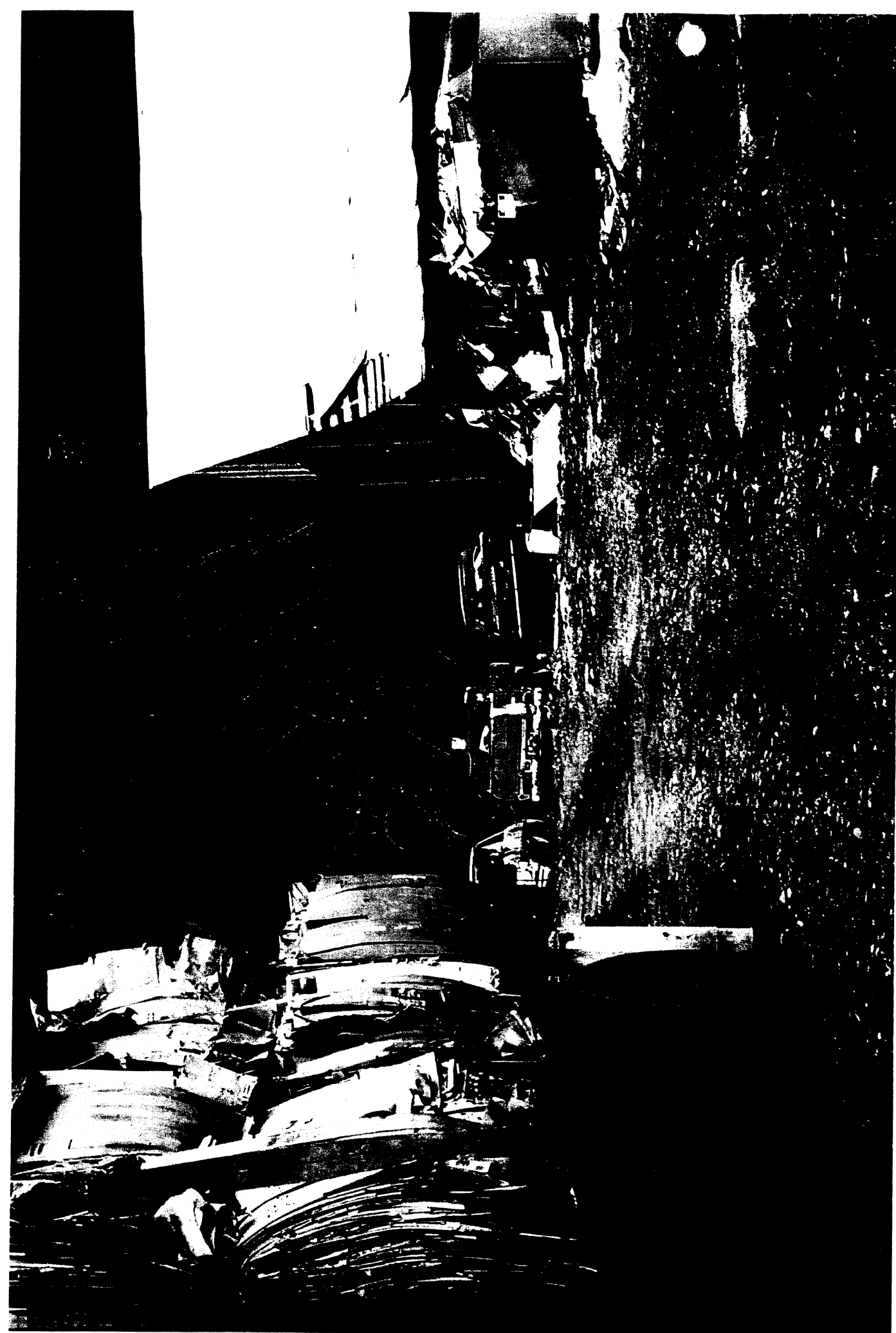




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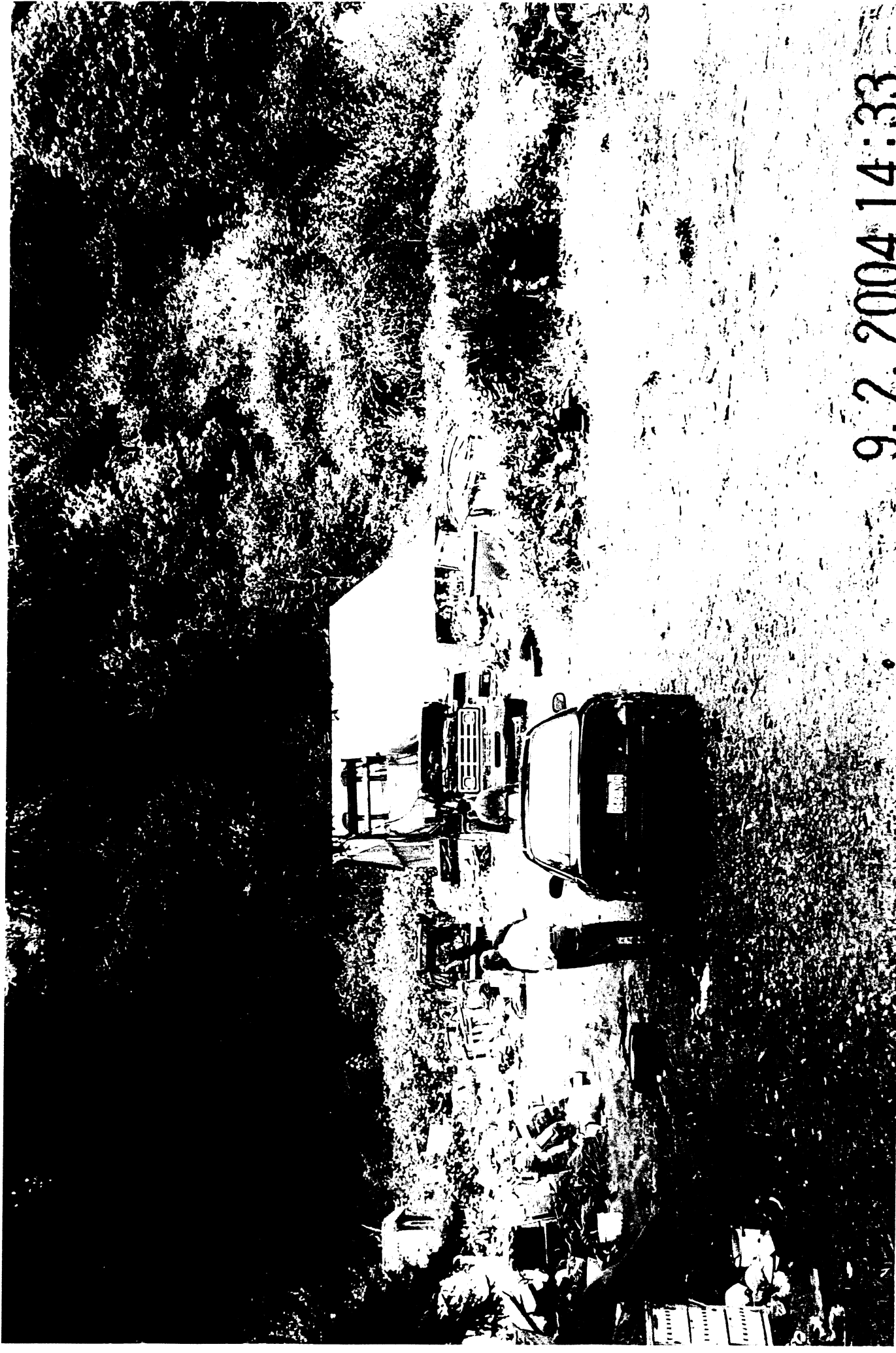


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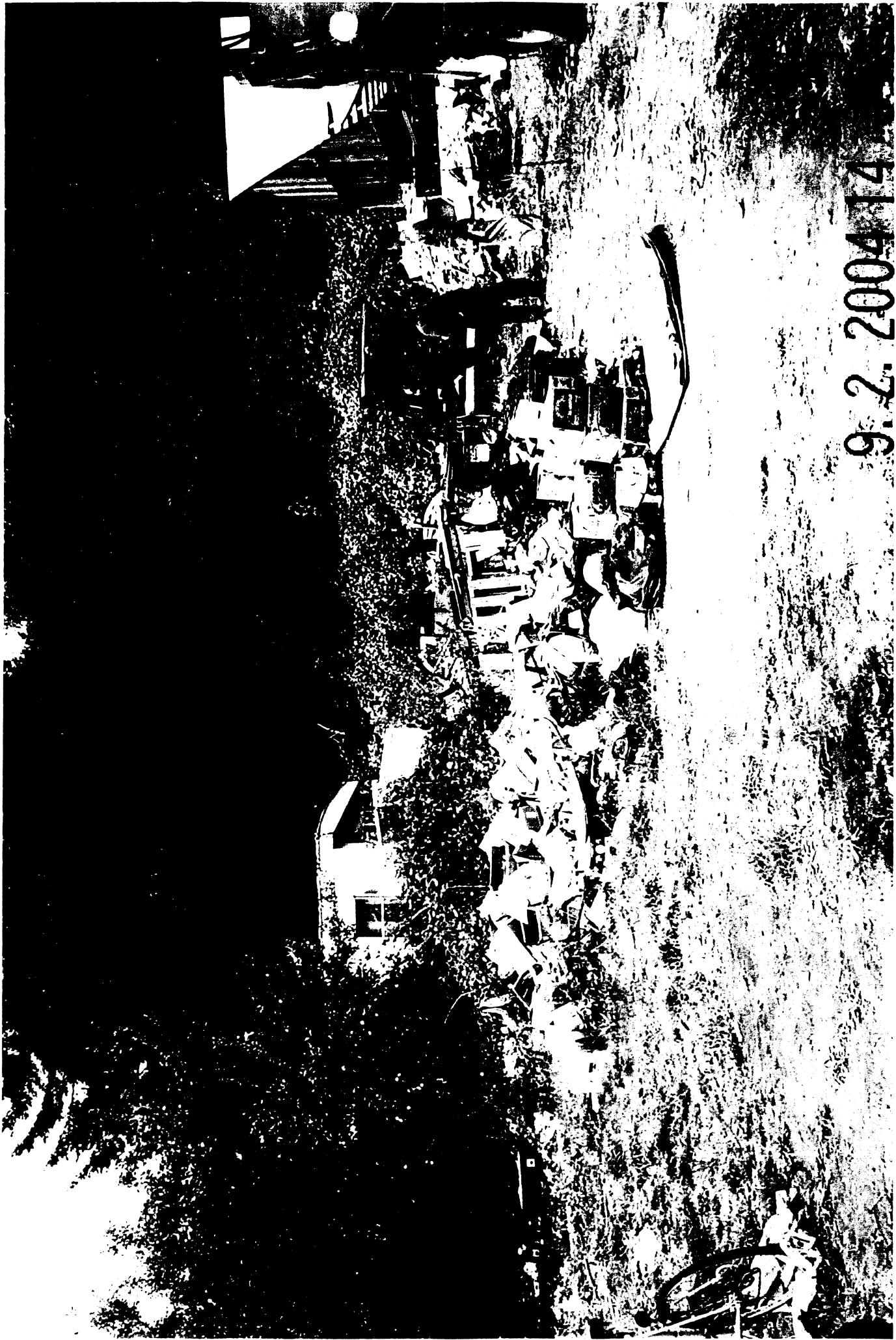




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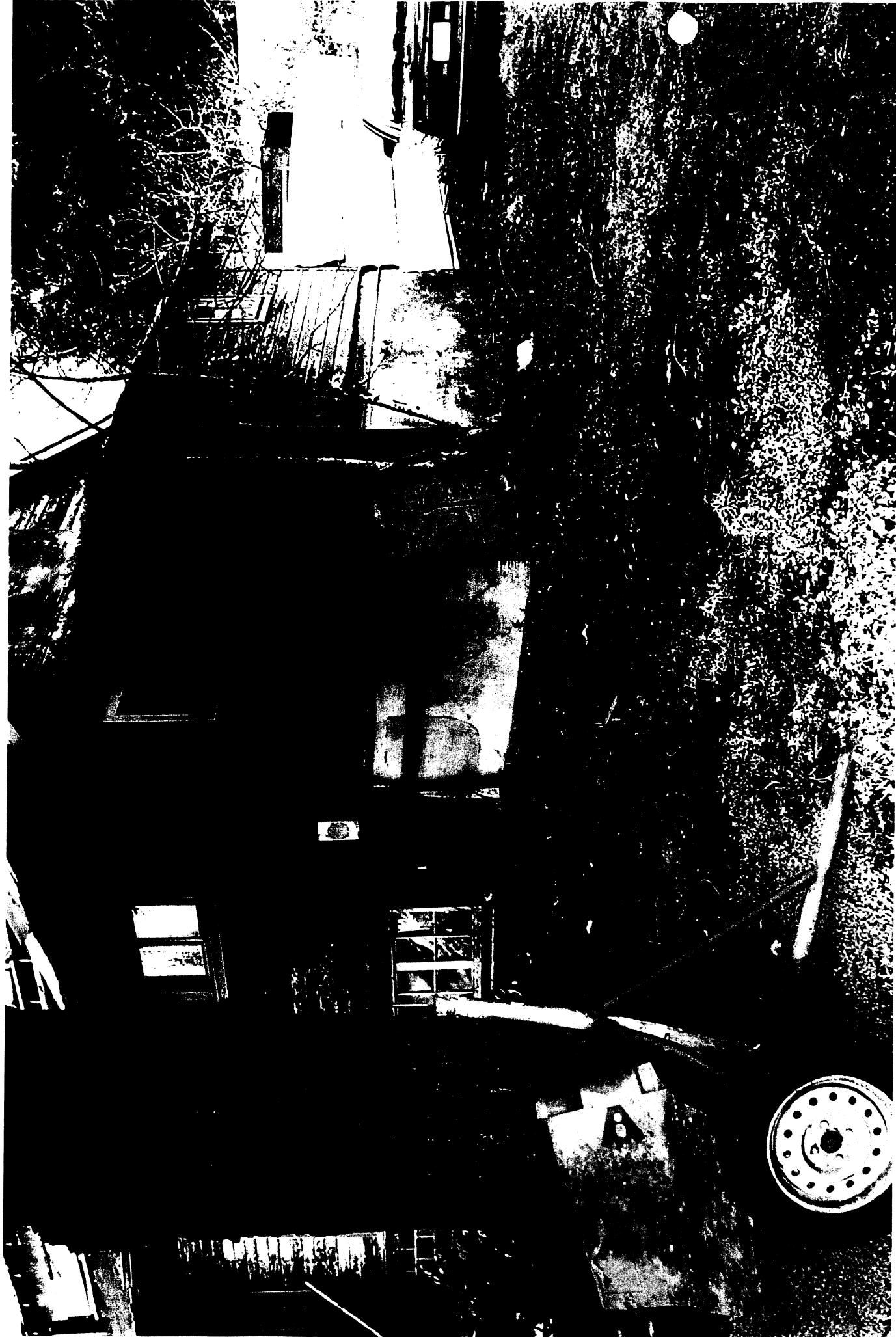






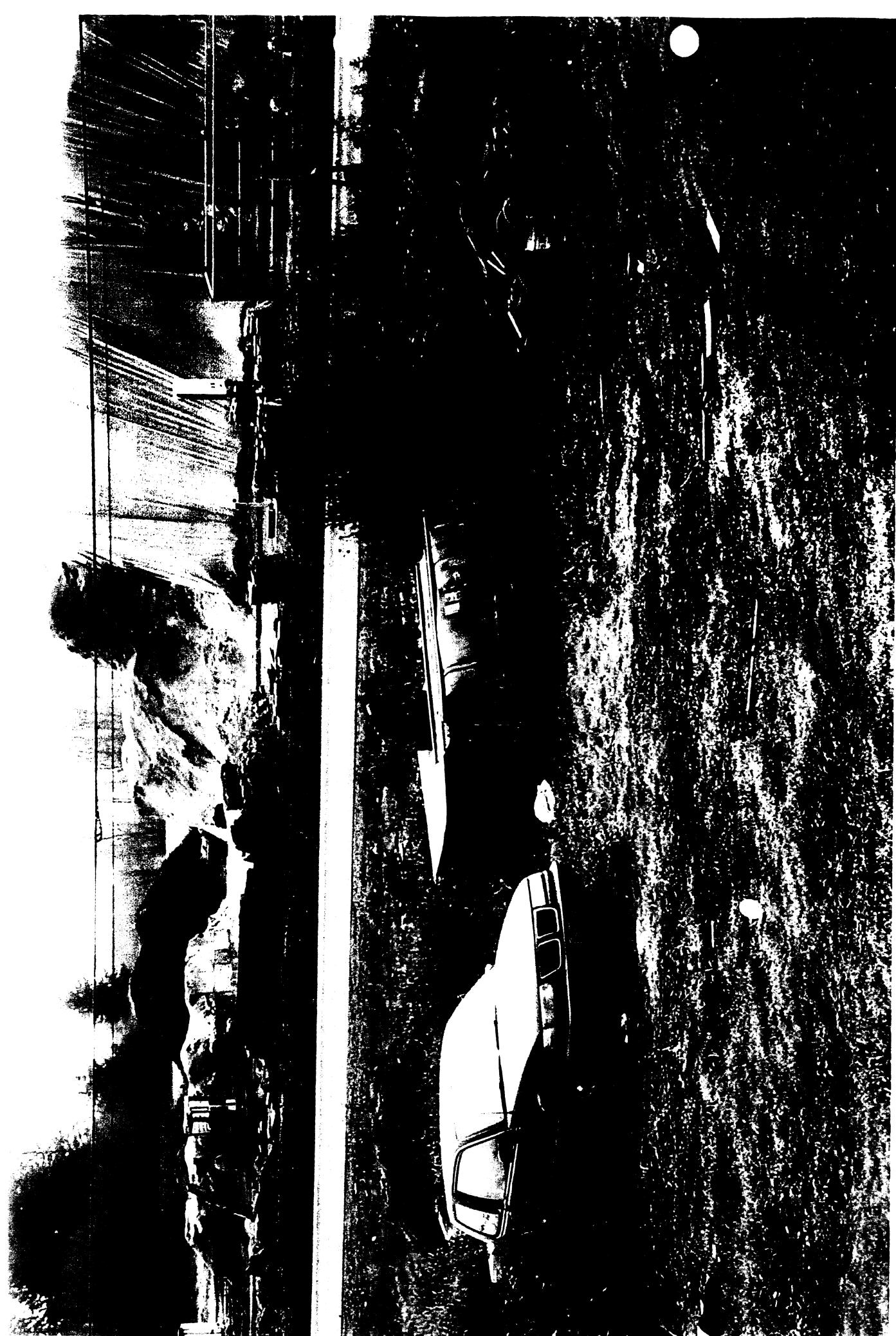
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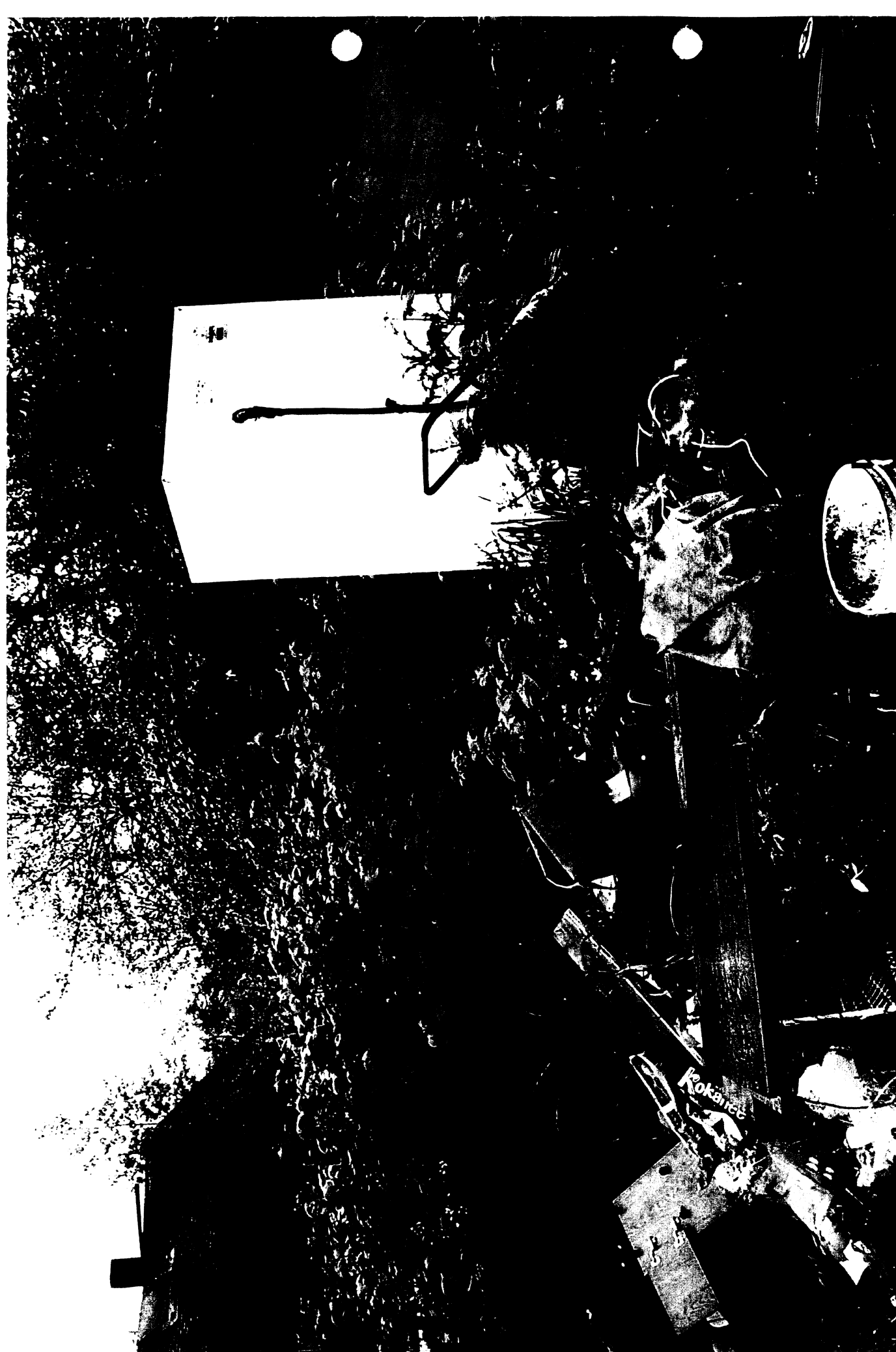








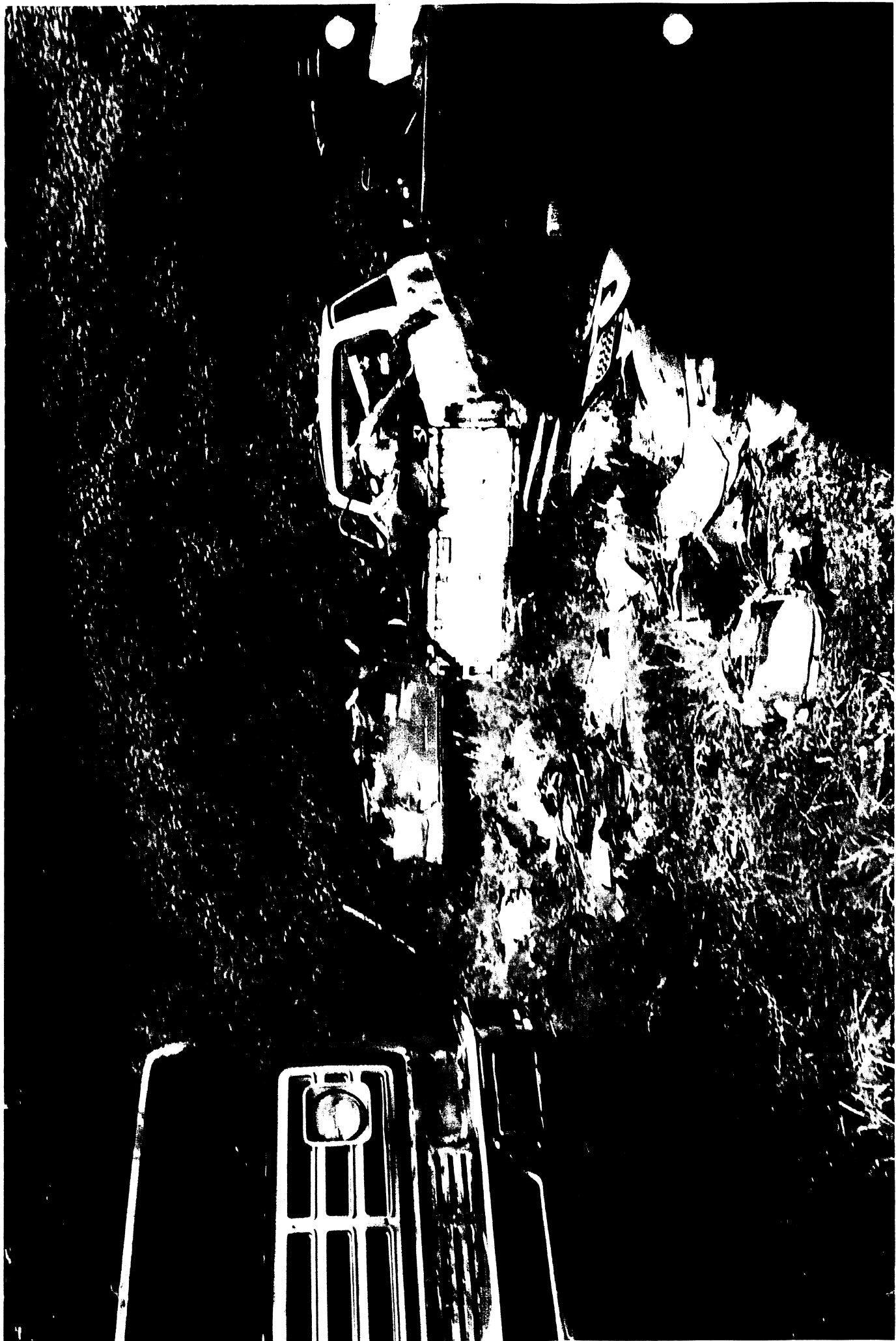


















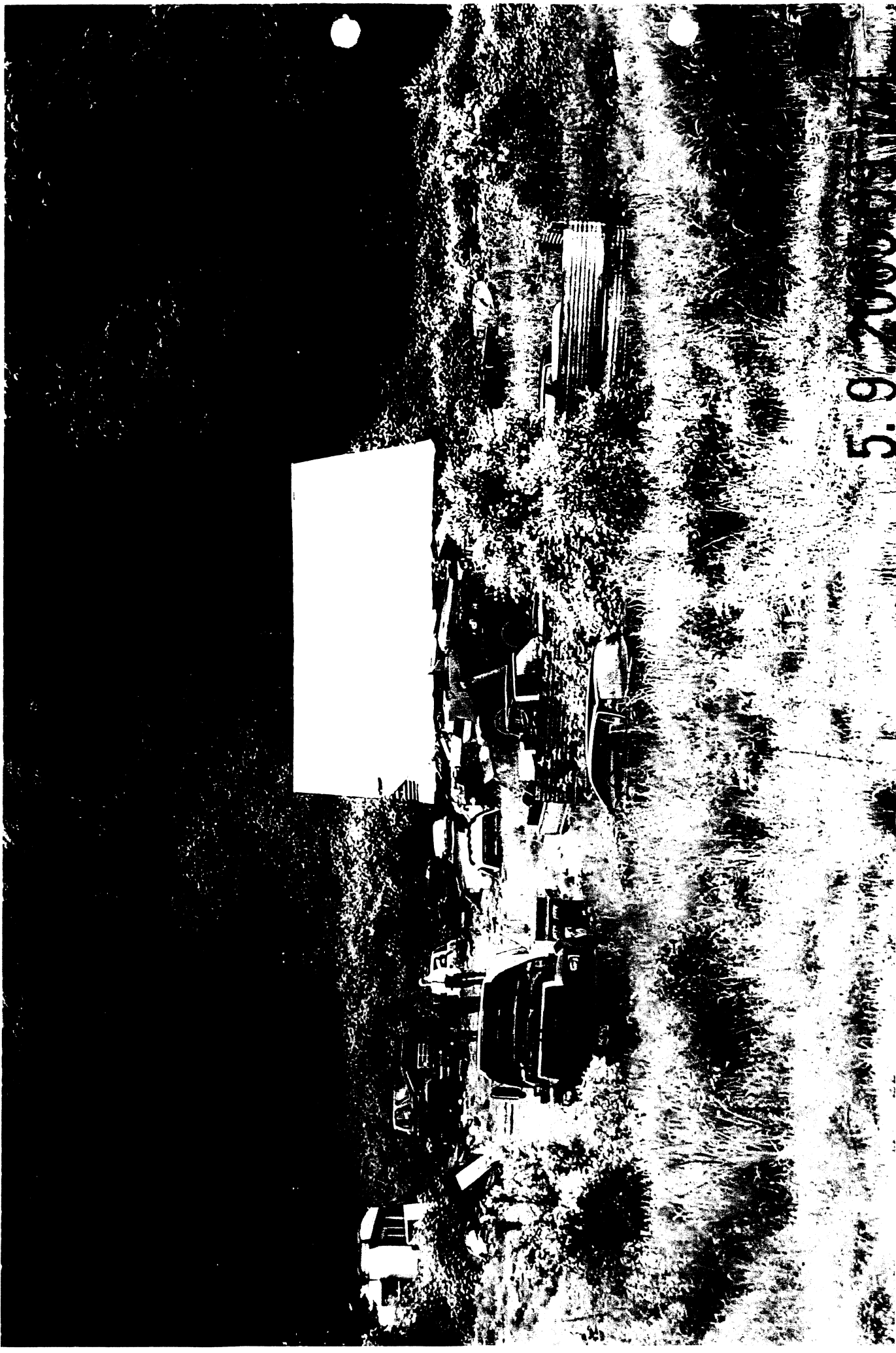




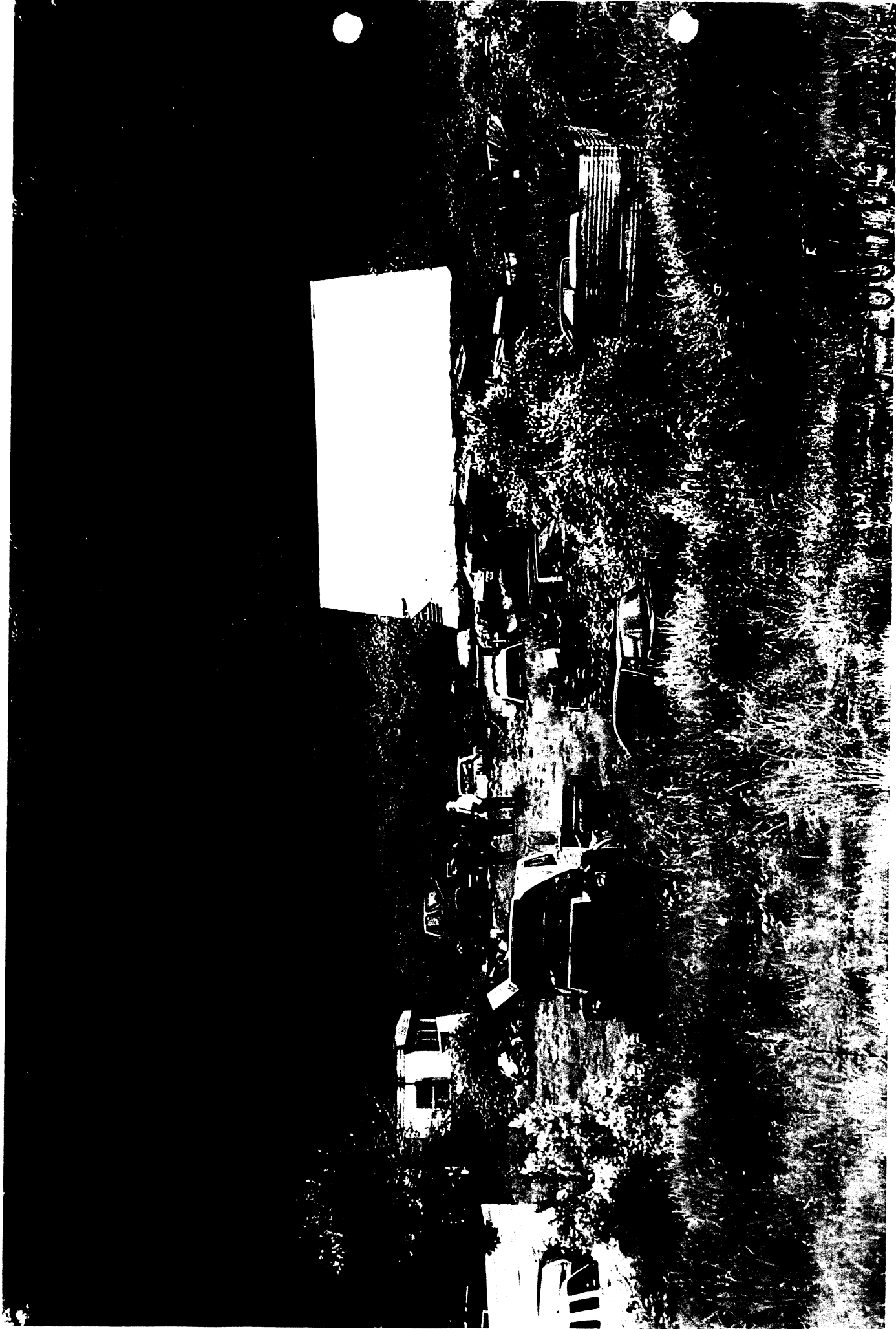




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# EXHIBIT C

Officer is authorized and directed to commence legal action to enjoin and abate any such nuisance. [Ord. 1160, 1998; Ord. H98-0327, 1998; Ord. H94-0303 § 3, 1994]

## **Chapter 8.45**

### **SOLID WASTE RULES AND REGULATIONS**

#### Sections:

- 8.45.010 Authority and purpose.
- 8.45.020 Title.
- 8.45.030 Applicability.
- 8.45.040 Owner responsibilities for solid waste.
- 8.45.050 Effective dates.
- 8.45.060 Definitions.
- 8.45.070 Performance standards.
- 8.45.080 Facility Standards.
- 8.45.090 Ground water monitoring.
- 8.45.100 Financial assurance requirements.
- 8.45.110 Permits Required.
- 8.45.120 Permit application and issuance and appeals.
- 8.45.130 Enforcement.
- 8.45.140 Solid waste facilities subject to remedial action measures.
- 8.45.150 Criteria for inert waste.
- 8.45.160 Beneficial use permit exemptions.
- 8.45.170 Fee schedules.

#### **8.45.010 Authority and purpose**

This chapter is adopted under the authority of chapter 70.95 RCW, Solid waste management -- Reduction and recycling, and WAC 173-350 - State Solid Waste Handling Standards, to protect public health, to prevent land, air, and water pollution, and conserve the state's natural, economic, and energy resources by:

(1) Setting minimum functional performance standards for the proper handling and disposal of solid waste originating from residences, commercial, agricultural and industrial operations and other sources;

(2) Identifying those functions necessary to assure effective solid waste handling programs;

(3) Following the priorities for the management of solid waste as set by the legislature in chapter 70.95 RCW, Solid waste management -- Reduction and recycling.

(4) Describing the responsibility of persons, municipalities, regional agencies, state and local government related to solid waste;

(5) Requiring solid waste handling facilities to be located, designed, constructed, operated and closed in accordance with this chapter;

(6) Adopting statewide minimum standards for solid waste handling; and

(7) Encouraging the development and operation of waste recycling facilities and activities needed to accomplish the management priority of waste recycling.. [H.ORD 041204 § 1, 2004; Ord. H-99-0301, 1999; Ord. H-94-0302 §1, 1994]

#### **8.45.020 Title.**

This chapter shall be known and shall be cited as the Solid Waste Rules and Regulations of the Lewis County Board of Health.. [H.ORD 041204 § 1, 2004; Ord. H99-301, 1999; Ord. H-94-0302 §2, 1994]

#### **8.45.030 Applicability.**

This chapter applies to facilities and activities that manage solid wastes as that term is defined in LCC 8.45.060. This chapter does not apply to the following:

(1) Overburden from mining operations intended for return to the mine;

(2) Wood waste used for ornamental, animal bedding, mulch and plant bedding, or road building purposes;

(3) Wood waste directly resulting from the harvesting of timber left at the point of generation and subject to chapter 76.09 RCW, Forest practices;

(4) Land application of manures and crop residues at agronomic rates;

(5) Home composting as defined in LCC 8.45.060;

(6) Single-family residences and single-family farms whose year round occupants engage in solid waste disposal regulated under WAC 173-351-700(4);

(7) Clean soils and clean dredged material as defined in WAC 173-350-100;

(8) Dredged material as defined in 40 CFR 232.2 that is subject to:

(a) The requirements of a permit issued by the U.S. Army Corps of Engineers or an approved state under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(b) The requirements of a permit issued by the U.S. Army Corps of Engineers under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(c) In the case of U.S. Army Corps of Engineers civil works projects, the administrative equivalent of the permits referred to in (a) and (b) of this subsection, as provided for in U.S. Army Corps of Engineers regulations, including, for example, 33 CFR 336.1, 336.2, and 337.6;

(9) Biosolids that are managed under chapter 173-308 WAC, Biosolids management;

(10) Domestic septage taken to a sewage treatment plant permitted under chapter 90.48 RCW, Water pollution control;

(11) Liquid wastes, the discharge or potential discharge of which, is regulated under federal, state or local water pollution permits;

(12) Domestic wastewater facilities and industrial wastewater facilities otherwise regulated by federal, state, or local water pollution permits;

(13) Dangerous wastes fully regulated under chapter 70.105 RCW, Hazardous waste management, and chapter 173-303 WAC, Dangerous waste regulations;

(14) Special incinerator ash regulated under chapter 173-306 WAC,

Special incinerator ash management standards;

(15) PCB wastes regulated under 40 CFR Part 761, Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions, except for:

(a) PCB household waste; and

(b) PCB bulk product wastes identified in 40 CFR Part 761.62 (b)(1) that are disposed of in limited purpose landfills;

(16) Radioactive wastes, defined by chapter 246-220 WAC, Radiation protection -- General provisions, and chapter 246-232 WAC, Radioactive protection -- Licensing applicability;

(17) Landfilling of municipal solid waste regulated under chapter 173-351 WAC, Criteria for municipal solid waste landfills;

(18) Drop boxes used solely for collecting recyclable materials;

(19) Intermodal facilities as defined in LCC 8.45.060; and

(20) Solid waste handling facilities that have engaged in closure and closed before the effective date of this chapter;

(21) Nothing in these rules and regulations is intended to supersede the provisions of the Lewis County Right to Farm Ordinance, to the extent that such Ordinance is consistent with the minimum standards of Chapters 70.05 and 70.95 RCW and Chapter 173-350 Solid Waste Handling Standards. [H.ORD 041204 § 1, 2004; Ord. H-99-0301, 1999; Ord. H-94-0302 §1, 1994]

#### **8.45.040 Owner responsibilities for solid waste.**

The owner, operator, or occupant of any property, premise, business establishment, or industry shall be responsible for the satisfactory and legal arrangement for the solid waste handling of all solid waste generated or accumulated on the property. It is a violation of this chapter for any

owner, operator, or occupant to place, maintain, or allow solid waste to remain upon their property without a permit issued under this chapter.. [H.ORD 041204 § 1, 2004; Ord. H-99-0301, 1999; Ord. H-94-0302A §4-amended, 1998; Ord. H-94-0302 §4, 1994].

#### **8.45.050 Effective dates.**

(1) Effective dates – new facilities. These standards apply to all facilities, except existing facilities, as defined in this chapter, upon the effective date of this chapter.

(2) Effective dates - Existing facilities.

(a) The owner or operator of existing facilities shall:

(i) Meet all applicable operating, environmental monitoring, closure and post-closure planning, and financial assurance requirements of this chapter by February 10, 2005; and

(ii) Meet all applicable performance and design requirements, other than location or setback requirements, by February 10, 2006.

(b) These standards apply to all new solid waste handling units at existing facilities upon the effective date of this chapter.

(c) The owner or operator of existing facilities shall initiate the permit modification process outlined in LCC 8.45.120 by August 10, 2004. If a permit modification is necessary, every application for a permit modification shall describe the date and methods for altering an existing facility to meet (a)(i) through (iii) of this subsection.

(d) The jurisdictional health department shall determine if a new permit application is required based on the extent of the changes needed to bring the facility into compliance.

(e) An existing facility completing closure shall close in compliance with applicable requirements of this chapter.

[H.ORD 041204 § 1, 2004; Ord. H99-0301, 1999; Ord. H-94-0302 §5, 1994]

#### **8.45.060 Definitions.**

When used in this chapter, the following terms have the meanings given below.

(1) "Active area" means that portion of a facility where solid waste recycling, reuse, treatment, storage, or disposal operations are being, are proposed to be, or have been conducted. Setbacks shall not be considered part of the active area of a facility.

(2) "Agricultural composting" means composting of agricultural waste as an integral component of a system designed to improve soil health and recycle agricultural wastes. Agricultural composting is conducted on lands used for farming.

(3) "Agricultural wastes" means wastes on farms resulting from the raising or growing of plants and animals including, but not limited to, crop residue, manure and animal bedding, and carcasses of dead animals weighing each or collectively in excess of fifteen pounds.

(4) "Agronomic rates" means the application rate (dry weight basis) that will provide the amount of nitrogen or other critical nutrient required for optimum growth of vegetation, and that will not result in the violation of applicable standards or requirements for the protection of ground or surface water as established under chapter 90.48 RCW, Water pollution control and related rules including chapter 173-200 WAC, Water quality standards for ground waters of the state of Washington, and chapter 173-201A WAC, Water quality standards for surface waters of the state of Washington.

(5) "Air quality standard" means a standard set for maximum allowable contamination in ambient air as set forth in chapter 173-400 WAC, General regulations for air pollution sources.

(6) "Below ground tank" means a

device meeting the definition of "tank" in this chapter where a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface of the tank that is in the ground.

(7) "Beneficial use" means the use of solid waste as an ingredient in a manufacturing process, or as an effective substitute for natural or commercial products, in a manner that does not pose a threat to human health or the environment. Avoidance of processing or disposal cost alone does not constitute beneficial use.

(8) "Biosolids" means municipal sewage sludge that is a primarily organic, semisolid product resulting from the wastewater treatment process, that can be beneficially recycled and meets all applicable requirements under chapter 173-308 WAC, Biosolids management. Biosolids includes a material derived from biosolids and septic tank sludge, also known as septage, that can be beneficially recycled and meets all applicable requirements under chapter 173-308 WAC, Biosolids management.

(9) "Buffer" means a permanently vegetated strip adjacent to an application area, the purpose of which is to filter runoff or overspray from the application area and protect an adjacent area.

(10) "Cab cards" means a license carried in a vehicle that authorizes that vehicle to legally pick up waste tires and haul to a permitted, licensed facility or an exempt facility for deposit.

(11) "Captive insurance companies" means companies that are wholly owned subsidiaries controlled by the parent company and established to insure the parent company or its other subsidiaries.

(12) "Channel migration zone" means the lateral extent of likely movement of a stream or river channel along a stream reach.

(13) "Clean soils and clean dredged

material” means soils and dredged material that do not contain contaminants at concentrations which could negatively impact the existing quality of air, waters of the state, soils, or sediments; or pose a threat to the health of humans or other living organisms.

(14) “Closure” means those actions taken by the owner or operator of a solid waste handling facility to cease disposal operations or other solid waste handling activities, to ensure that all such facilities are closed in conformance with applicable regulations at the time of such closures and to prepare the site for the post-closure period.

(15) “Closure plan” means a written plan developed by an owner or operator of a facility detailing how a facility is to close at the end of its active life.

(16) “Composted material” means organic solid waste that has undergone biological degradation and transformation under controlled conditions designed to promote aerobic decomposition at a solid waste facility in compliance with the requirements of this chapter. Natural decay of organic solid waste under uncontrolled conditions does not result in composted material.

(17) “Composting” means the biological degradation and transformation of organic solid waste under controlled conditions designed to promote aerobic decomposition. Natural decay of organic solid waste under uncontrolled conditions is not composting.

(18) “Conditionally exempt small quantity generator (CESQG)” means a dangerous waste generator whose dangerous wastes are not subject to regulation under chapter 70.105 RCW, Hazardous waste management, solely because the waste is generated or accumulated in quantities below the threshold for regulation and meets the conditions prescribed in WAC 173-303-070 (8)(b).

(19) “Conditionally exempt small

quantity generator (CESQG) waste” means dangerous waste generated by a conditionally exempt small quantity generator.

(20) “Container” means a portable device used for the collection, storage, and/or transportation of solid waste including, but not limited to, reusable containers, disposable containers, and detachable containers.

(21) “Contaminant” means any chemical, physical, biological, or radiological substance that does not occur naturally in the environment or that occurs at concentrations greater than natural background levels.

(22) “Contaminate” means the release of solid waste, leachate, or gases emitted by solid waste, such that contaminants enter the environment at concentrations that pose a threat to human health or the environment, or cause a violation of any applicable environmental regulation.

(23) “Contaminated soils and contaminated dredged material” means soils and dredged material that contain contaminants at concentrations which could negatively impact the existing quality of air, waters of the state, soils or sediments, or pose a threat to the health of humans or other living organisms.

(24) “Corrosion expert” means a person certified by the National Association of Corrosion Engineers (NACE) or a registered professional engineer who has certification or licensing that includes education and experience in corrosion control.

(24) “Crop residues” means vegetative material leftover from the harvesting of crops, including leftover pieces or whole fruits or vegetables, crop leaves and stems. Crop residue does not include food processing waste.

(25) “Dangerous wastes” means any solid waste designated as dangerous waste by the department under chapter 173-303 WAC, Dangerous waste regulations.

as required under the appropriate annual reporting section of this chapter;

(v) Operate in accordance with any other written conditions that the jurisdictional health department deems appropriate; and

(vi) Shall take any measures deemed necessary by the jurisdictional health department when the permit deferral has been revoked. [H.ORD 041204 § 1, 2004]

#### **8.45.130 Enforcement.**

(1) Other Laws, Regulations and Agency Requirements. All solid waste management shall be subject to the authority of other laws, regulations or other agency requirements in addition to these rules and regulations. Nothing in these rules and regulations is intended to abridge or alter the rights of action by the state or by persons which exist in equity, common law or other statutes to abate pollution or to abate a nuisance.

Chapter 173-350-WAC, the Minimum Functional Standards for Solid Waste Handling, or as amended, is hereby adopted by reference. If a conflict exists in the interpretation of Chapter 173-350 WAC and these regulations, the more stringent shall apply.

(2) Enforcement Authority. The Health Officer or his/her designee shall have the authority to enforce the provisions of these regulations equally on all persons. The Health Officer or his/her designee is also authorized to adopt rules consistent with the provisions of these rules and regulations for the purpose of enforcing and carrying out its provisions.

##### **(3) Right of Entry.**

(a) Whenever necessary to make an inspection of a non-permitted site to enforce or determine compliance with the provisions of these regulations, and other relevant laws and regulations, or whenever the Health Officer or his/her designee has

cause to believe that a violation of these regulations has been or is being committed by someone not holding a permit issued under this chapter, the Health Officer or his/her designee or his/her duly authorized inspector are exempt from the provisions of Ch. 1.25 LCC and may enter any building, structure, property or portion thereof at reasonable times to inspect the same, but only according to law.

(b) With respect to permit based inspections, the Health Officer, or designee, or duly authorized inspector must be given access to the inspection site, in accordance with the conditions of the permit. If such building, structure, property or portion thereof is occupied, the inspector shall present identification credentials, state the reason for the inspection, and request entry.

(4) Violations and Penalties – Persons Requiring a Permit. The requirements in this section apply to all persons which are required to obtain a permit under these regulations, or rules and regulations adopted under them.

(a) Violations - Investigations - Evidence. An authorized representative of the Department may investigate alleged or apparent violations of these regulations. Upon request of the authorized representative of the Department, the person allegedly or apparently in violation of these regulations shall provide information identifying themselves. Willful refusal to provide information identifying a person as required by this section is a misdemeanor.

(b) Notice and Order to Correct Violation.

(i) Issuance. Whenever the Health Officer determines that a violation has occurred or is occurring, he/she shall pursue reasonable attempts to secure voluntary correction, failing which he/she may issue to the property owner or to any person causing, allowing or participating in the violation a written notice and order to correct violation and/or to immediately

cease such work or activity until authorized by the Health Officer or his/her designee to proceed.

(ii) Content and Process.

(A) The Health Officer or his/her designee shall issue such notice and order in writing to the person(s) creating, causing, participating in or allowing the violation.

(B) The notice of violation and order shall contain the following:

(I) The name and mailing address of the property owner or other person(s) to whom the notice of violation is directed by the Health Officer;

(II) A street address or legal description adequate for the identification of the activity, property or portion thereof upon which the violation is based;

(III) A description of the violation and a reference to the nature of the regulation violated which is sufficient to reasonably apprise the recipient of the nature of the violation;

(IV) A statement of the action required or action to be terminated to correct the violation and a time or date by which the corrective action must be completed so as avoid citation, legal actions for injunction and abatement, or other enforcement actions;

(V) A statement of the possible penalties that may be assessed against the person(s) for each violation while the violation continues;

(VI) A statement that the violation may also constitute a criminal violation for each and every day, or portion of a day, for which the violation continues; and

(VII) A statement describing the appeals process under this section and LCC 2.25 and the time limitations for filing appeal.

(C) The notice shall be served upon the person(s) to whom it is

directed, either personally or by mailing a copy of the notice by certified mail, postage prepaid and return receipt requested, to such persons at their last known mailing address. Proof of service shall be made at the time of service by written declaration under penalty of perjury executed by the party effecting such service, and declaring the date of service and, in the case of personal service, the time of service, and the manner by which service was made.

(iii) Supplemental Order to Correct Violation. The Health Officer may at any time add to, rescind in part, or otherwise modify a notice and order to correct violation. The supplemental order shall be governed by the same procedures applicable to all notice and order to correct violations issued under this chapter.

(iv) Enforcement of Final Order. If, after any order duly issued by the Health Officer or his/her designee has become final, the person to whom such order is directed fails, neglects, or refuses to obey such order, the Health Officer or his/her designee may:

(A) Cause such person to be prosecuted under these regulations; and/or

(B) Institute any appropriate action to impose and collect a civil penalty provided by law; and/or

(C) Abate the health violation; and/or

(D) Pursue any other appropriate remedy at law or equity

(E) Issue a civil infraction under LCC 1.20.040

(v) Written Assurance of Discontinuance. The Health Officer or his/her designee may accept a written assurance of discontinuance of any act in violation of this regulation from any person who has engaged in such act. Failure to comply with the assurance of discontinuance shall be a further violation of this chapter.

(c) Violations - Misdemeanor Penalty. Any person who:

(i) fails, neglects, or refuses to



obey a final order of the Health Officer or his/her designee to correct a violation; or

(ii) fails, neglects, or refuses to comply with a written assurance of discontinuance; or

(iii) operates a solid waste storage, treatment, processing, handling or disposal site or facility without a permit; or

(iv) operates a solid waste storage, treatment, processing, handling or disposal site or facility after a permit has been suspended, or

(v) dumps or deposits solid waste without a permit in violation of this chapter, is guilty of a misdemeanor, and upon conviction, may be punished by imprisonment in the county jail for maximum term fixed by the court of not more than ninety (90) days, or by a fine in an amount fixed by the court of not more than one thousand dollars (\$1000), or by both such imprisonment and fine. The court may also impose restitution.

(d) Abatement Orders. In addition to or as an alternative to any other judicial or administrative remedy provided in this chapter or by law or other rules and regulations, the Health Officer or his/her designee may order violation of this chapter to be abated. The effect of the abatement order shall be to require work to be done to correct the violation within a reasonable time period. If the required corrective work is not commenced or completed within the time specified, the Health Officer or his/her designee will proceed to abate the violation and cause the work to be done. The abatement order shall be posted upon the property where the violation is occurring, and shall be served upon the owner of the property either personally or by certified mail, return receipt requested, at the owner's last known address. The property owner is responsible for the costs of all corrective action, whether done by the owner or the Department of Ecology or the Health Officer. The Health Officer shall have the

right to collect the amount expended for abatement through appropriate legal action.

(e) Other Legal or Equitable Relief. Notwithstanding the existence or use of any other remedy, the Health Officer may seek legal or equitable relief to enjoin any acts or practices or abate any conditions which constitute or will constitute a violation of this chapter, or rules and regulations adopted under them.

(f) Permit Suspension and Appeal.

(i) Suspension of Permits.

(A) The Health Officer or his/her designee may suspend any permit issued under these regulations for:

(I) failure of the holder to comply with the requirements of this chapter or any permit issued pursuant to this chapter, or

(II) failure to comply with any notice and order issued pursuant to this chapter related to the permitted activity, or

(III) interference with the Health Officer or his/her designee in the performance of his/her duties, or

(IV) discovery by the Health Officer or his/her designee that a permit was issued in error or on the basis of incorrect information supplied to him/her, or

(V) the dishonor of any check or draft used by the permit holder to pay any fees associated with the permit.

(B) Permit suspension shall be carried out according to the notice and order provisions specified in subsection (4). The suspension notice shall inform the holder or operator that upon request, the operator or holder of the permit may receive a hearing on the suspension in front of the Hearing Examiner within thirty days of the request. The notice shall be sent to all interested parties, including the Department of Ecology. The suspension shall be effective upon service of the suspension notice and order upon the holder or operator.

Requests for hearings shall comply with the rules in Ch. 2.25 LCC.

(C) Notwithstanding any other provision of this regulation, whenever the Health Officer finds that a violation of this regulation has created or is creating an unsanitary, dangerous or other condition which, in his/her judgment, constitutes an immediate and irreparable hazard, he/she may, without service of a written notice and order, suspend and terminate operations under the permit immediately.

(ii) Appeals

(A) Whenever the Health Officer suspends a permit for a solid waste handling facility or orders the permit holder to terminate action, the permit holder may request a hearing before the County Hearing Examiner to appeal the suspension. The permit holder must request the hearing in writing within 10 days pursuant to Ch. 2.25 LCC. A hearing will be granted within 30 days.

(B) Any party aggrieved by the Hearing Examiner's determination may appeal to the State Pollution Control Hearings Board by filing with the Board a notice of appeal within thirty days after receipt of notice of the determination of the hearings examiner.

(C) If the Health Officer suspends a permit for an operating waste recycling facility that receives waste from more than one city or county, and the applicant or holder of the permit requests a hearing or files an appeal under this section, the suspended permit shall not be effective until the completion of the appeal process under this section, unless the Health Officer declares that continued operation of the waste recycling facility poses a very probable threat to human health and the environment.

(D) Procedures for appealing beneficial use exemption determinations are contained in WAC 173-350-200.

(E) Enforcement of any notice and order of the Health Officer or his/her designee pursuant to these regulations shall be stayed during the pendency of any appeal under these regulations, except when the Health Officer determines that the violation will cause immediate and irreparable harm and so states in the notice and order issued. [H.ORD 041204 § 1, 2004]

**8.45.140 Solid waste facilities subject to remedial action measures.**

When the owner or operator of a solid waste facility is subject to remedial measures in compliance with chapter 173-340 WAC, the Model Toxics Control Act, the roles of the jurisdictional health department and the Department of Ecology shall be as follows:

(1) The jurisdictional health department:

(a) May participate in all negotiations, meetings, and correspondence between the owner and operator and the department in implementing the model toxics control action;

(b) May comment upon and participate in all decisions made by the department in assessing, choosing, and implementing a remedial action program;

(c) Shall require the owner or operator to continue closure and post-closure activities as appropriate under this chapter, after remedial action measures are completed; and

(d) Shall continue to regulate all solid waste facilities during construction, operation, closure and post-closure, that are not directly impacted by chapter 173-340 WAC.

(2) The department shall carry out all the responsibilities assigned to it by chapter 70.105D RCW, Hazardous waste cleanup -- Model Toxics Control Act. [H.ORD 041204 § 1, 2004]

8.15.280 Violation - Penalties.

8.15.290 Appeals.

## **Article I. Solid Waste Disposal**

### **8.15.010 Definitions.**

Unless otherwise expressly provided in this article, the definitions found in RCW 70.95.030 and WAC 173-304-100 shall apply in interpreting this article.

(1) "Approval" or "approved" by the board or authorized designee means an approval given after all other necessary permitting processes have been completed, except the health board permit required by RCW 70.95.170 through 70.95.190, but no special duty to any permittee or third party is created by the terms of this article or any approval.

(2) "Board" means the Lewis County board of commissioners.

(3) "City" means any city or town that has entered the interlocal agreement (collectively, the "cities").

(4) "County" means Lewis County.

(5) "County solid waste" means solid waste generated and collected in, or transported for purpose of disposal into, the unincorporated areas of the county.

(6) "Director" means the director of the Lewis County department of community development, or the alternate public official designated by the county to carry out the duties of the director pursuant to this article.

(7) "Disposal site" means a facility where any final treatment, utilization, processing, transfer or deposit of county solid waste occurs, and for which a permit is required pursuant to RCW 70.95.170 through 70.95.190. For purposes of this article, a transfer station or a drop box shall be deemed a disposal site.

(8) "District" means the solid waste disposal district no. 1 of Lewis County to be formed pursuant to the interlocal agreement and county ordinance.

(9) "Executive committee" means the executive advisory committee formed pursuant to the interlocal agreement.

(10) A "hauler" is a solid waste collection company that has either obtained a certificate of convenience and necessity pursuant to Chapter 81.77 RCW to serve any area of the county, or that has been granted a franchise to provide garbage and refuse collection service within any city.

(11) "Health Board" means the Lewis County health board or any successor agency charged with responsibility for issuing or renewing permits for solid waste disposal sites pursuant to RCW 70.95.170 through 70.95.190.

(12) "Interlocal agreement" means the "interlocal agreement regarding Lewis County solid waste disposal district and flow control" entered into, or to be entered into, by the county, the district and the cities, and all amendments to such agreement.

(13) "Operator" means any person with whom the district or the county contracts for the design, construction, ownership or operation of any disposal site or other solid waste handling facility.

(14) "Plan" means the Lewis County Comprehensive Solid Waste Management Plan, as it now exists and may be amended from time to time.

(15) "Separated waste" means the solid waste that remains after the removal of all recyclable material that is practicable to remove.

(16) "SWAC" means the Lewis County solid waste advisory committee.

(17) "Source separated" means the separating of different kinds of solid waste at the place where the waste is generated.

(18) "System" means the system of solid waste handling established by the county, including but not limited to strategies and programs for solid waste handling owned, operated or provided for by the county, either directly or by contract with the district

or operators, and all administrative activities related thereto. The term "system" includes the district, all disposal sites and other facilities designated by the county for the disposal of solid waste, and the solid waste handling programs and facilities provided by the county and the district. [Res. 01-073, 2001\*; Ord. 1157, 1998; Ord. 1123 § 1, 1992]

#### **8.15.020 Purpose of article.**

(1) The purpose of this article is to establish a comprehensive county-wide system that is adequate to handle all solid waste generated in incorporated and unincorporated areas of the county, and that will protect public health and safety; control the flow of county solid waste; prevent land, air, and water pollution; conserve and protect the natural resources and environment of the county; limit the potential liability of the county for improper disposal; and provide for disposal charges that are fair, just and reasonable. These purposes require that all county solid waste, except for waste exempted pursuant to LCC 8.15.080, be directed to certain disposal sites.

(2) To carry out this purpose, this article is adopted to regulate the establishment, operation and rates of all disposal sites that are located in the county and the disposal of county solid waste at disposal sites in and outside of the county.

(3) The county, pursuant to powers granted by law by this article exercises its authority to control disposal of all solid waste generated and collected within unincorporated areas of the county; to negotiate contracts with parties that operate disposal sites; and to permit cities to use county-owned disposal sites, and other disposal sites upon terms to be negotiated between the county and the owner or operator of such other sites. [Ord. 1157, 1998; Ord. 1123 § 2, 1992]

#### **8.15.030 System of solid waste handling.**

(1) Pursuant to RCW 36.58.040, this article establishes a system of solid waste handling for all solid waste generated and collected in, or transported for disposal purposes into, incorporated or unincorporated areas of the county consistent with the plan and interlocal agreement.

(2) The system and the requirements of this article shall be binding upon all persons subject to its provisions within the county.

(3) Unless otherwise permitted by law, it is unlawful for any person to dispose of county solid waste at a disposal site, or in a manner, not authorized pursuant to this article.

(4) Except for disposal sites designated in an emergency pursuant to subsection (5) of this section or exempt under LCC 8.15.080, the disposal sites set forth in this section, and any additional disposal sites found to meet the requirements of LCC 8.15.070 and 8.15.090, are hereby designated as the sole disposal sites which are authorized to receive, and to which haulers and all other persons are authorized to deliver, county solid waste for disposal. Designations are expressly subject to:

(a) Receipt and continuing possession of and compliance with all permits and governmental approvals necessary for the operation of the site;

(b) The site's capability to dispose of county solid waste by the means identified in its designation;

(c) In the case of a private operator, the execution and delivery of an agreement between the county and the operator as described in LCC 8.15.070. Designated disposal sites include:

(i) Centralia and Morton transfer stations, and the moderate hazardous waste facility.

(ii) Drop boxes designated from time to time by the community services

director for specific categories and volumes of solid waste.

(iii) Any disposal site designated in accordance with LCC 8.15.050, 8.15.070, and 8.15.090, as applicable.

(5) Upon a finding by the director that it is necessary for the immediate preservation of the public health and safety that additional or alternate disposal sites be designated on an emergency basis and upon notification of the chairman of the board of such emergency, the director may approve additional disposal sites for up to 60 days without action by the board. [Res. 01-073, 2001\*; Ord. 1157, 1998; Ord. 1123 § 3, 1992]

#### **8.15.040 Unlawful disposal of solid waste.**

It is unlawful for any person to dump or deposit or permit the dumping or depositing of any solid waste onto or under the ground or into any waters within the unincorporated areas of the county except at a disposal site that has been designated pursuant to LCC 8.15.030 or exempted pursuant to LCC 8.15.080, as amended from time to time; provided that nothing herein shall prohibit a person from dumping or depositing solid waste resulting from his own activities onto or under the surface of the ground owned or leased by him when such action complies with all other applicable laws. [Ord. 1157, 1998; Ord. 1123 § 4, 1992]

#### **8.15.050 Acquisition of disposal sites by county and district.**

By action of the board (in its capacity as the legislative body of the county or as the governing body of the district), the county or district may acquire by purchase, lease, or otherwise, or may contract with other parties for the use of, disposal sites that are adequate for disposal of solid waste generated in, or transported into, incorporated and unincorporated areas of the county. Such disposal sites shall be

consistent with the plan, and with all federal, state, and local requirements. Upon acquisition or effectiveness of a contract, such sites shall become part of the system of solid waste handling established by this article. [Ord. 1157, 1998; Ord. 1123 § 5, 1992]

#### **8.15.060 Interlocal operations.**

Solid waste disposal sites owned, operated, or controlled in whole or in part by the county or district, and designated by the county for the receipt of county solid waste, shall be available to accept solid wastes generated and collected in the cities, and solid waste generated in other counties; provided that the governing bodies of such jurisdictions enter into and maintain interlocal agreements with the county and comply with the conditions contained therein and herein. Nothing in this article shall be construed to modify any existing interlocal agreements among the county, the district and the cities. The interlocal agreement satisfies the requirements of this section with respect to cities that enact flow control ordinances pursuant to that interlocal agreement. [Ord. 1157, 1998; Ord. 1123 § 6, 1992]

#### **8.15.070 Establishment and operation of disposal sites - Agreements regarding operation and rates.**

(1) Except for those sites exempt under LCC 8.15.080, it is unlawful for any person to establish, alter, expand, improve, or hereafter operate or maintain a disposal site that is located in or that accepts solid waste generated in or transported into the unincorporated areas of the county unless:

(a) The proposed site, facilities, and proposed method of operation comply with this article and with any regulations promulgated by the health board;

(b) The proposed site and proposed method of operation have been designated pursuant to LCC 8.15.030 or 8.15.090, and

all permits required by law have been obtained; and

(c) The operator of the proposed site, if owned by any person other than the county, has entered into an agreement with the county specifying the rates to be charged for disposal or processing of county solid waste at the disposal site and such other terms deemed necessary by the director to protect the public health, safety, and welfare, and for other public purposes; provided, that the county shall not be obligated to enter into any such agreement with such a person.

(2) For purposes of establishing and adjusting rates pursuant to this section, the operator of any disposal site shall furnish to the director information concerning actual and anticipated revenues, expenses, liabilities, debt amortization, equipment purchases and other data deemed pertinent by the director.

(3) Each agreement between an owner or operator and the county or district shall provide that if the disposal site fails to comply in any material respect with the terms of the agreement or with this article, the disposal site is subject to loss of designation.

(4) The director shall require the operator of each designated disposal site to furnish such evidence as the director deems necessary to verify that the disposal site complies with this article and shall report annually to the executive committee and to the board regarding such compliance. [Ord. 1157, 1998; Ord. 1123 § 7, 1992]

#### **8.15.080 Exempt operations.**

(1) The following solid waste processing and disposal activities and facilities related thereto are hereby exempted from this article:

(a) Wrecking automobiles and parts thereof and related storage and handling facilities which possess all necessary governmental permits and approvals.

(b) Depositing, pursuant to all necessary governmental permits and approvals, fewer than 2,000 cubic yards of soil, rock, tree stumps, gravel, broken concrete, broken asphalt, and similar inert wastes onto the surface of the ground whereby such depositing is to be temporary in nature, and graded or otherwise worked to fill an existing depression or low area of ground.

(c) Depositing agricultural solid waste onto or under the surface of the ground when said waste is being utilized primarily for fertilizer or a soil conditioner, as long as depositing such waste does not otherwise violate the law.

(d) Depositing sewage or sewage sludge onto or under the surface of the ground at a disposal site which possesses all necessary governmental permits and approvals for that purpose.

(e) Depositing "hazardous waste" as defined by RCW 70.105.010(15) onto or under the surface of the ground at a disposal site which possesses all necessary governmental permits and approvals for that purpose.

(f) Depositing solid waste by an industrial solid waste generator into its own private landfill which is accessory to the industry, is not open to haulers or the public, which possesses all necessary governmental permits and approvals for that purpose, and which is included in the plan.

(g) Facilities for the acceptance and marketing of source-separated recyclable materials including drop-off and buy-back centers, contract recycling services, and associated processing facilities.

(h) Handling and marketing of source-separated recyclable materials.

(i) Composting of yard waste at facilities that accept and market source-separated yard waste materials.

(j) On-site composting of organic materials generated on-site.

(k) Processing wood waste at facilities that accept source-separated wood waste materials.

(l) Handling and processing "infectious waste" within the meaning of Chapter 8.20 LCC, as that chapter may be amended from time to time.

(m) Depositing county solid waste by a hauler at a disposal site outside the county, provided that:

(i) Such waste is collected on a route that originates, terminates, and lies primarily outside the county;

(ii) Such disposal site possesses all necessary governmental permits and approvals; and

(iii) The hauler has obtained the director's approval for such disposal.

(2) The exemptions established by this section shall have no effect on the requirements of other local, state and federal laws. [Ord. 1157, 1998; Ord. 1123 § 8, 1992]

#### **8.15.090 Application for disposal site designation.**

(1) Applications for designation of a solid waste disposal site owned or operated by any person other than the county that is located within the unincorporated areas of the county, within incorporated areas of the county that have adopted a flow control ordinance pursuant to the interlocal agreement, or that is located outside the county, shall be on forms prescribed by the director and shall contain a description of the proposed and existing facilities and operations at the site, plans and specifications for any new or additional facilities to be constructed, and such other information as the director deems necessary.

(2) Upon receipt of an application for designation, the director shall transmit one copy of the application to the health board.

(3) Within 90 days of receipt of the application, the director shall investigate the application as necessary to determine

whether the proposed site complies with the plan and this article, and whether designation would promote the public interest. Upon completion of the investigation, the director shall submit the application, together with his recommendation as to whether the proposed site should be designated, first to the SWAC for its review and recommendation, then to the executive committee for its review and recommendation, and finally to the board for action. Approval of a disposal site designation shall be by county ordinance. Notwithstanding the foregoing, drop boxes may be designated by the director, after review and recommendation by the SWAC and executive committee, and board action shall not be required for such designation.

(4) If the board designates the proposed site as a disposal site, an agreement shall be negotiated and executed as provided in LCC 8.15.070(1)(a), (b), (c). [Ord. 1157, 1998; Ord. 1123 § 9, 1992]

#### **8.15.100 Suspension or revocation.**

In the event that any designated disposal site substantially fails to comply with this article, the plan, other applicable laws, conditions imposed in conjunction with the issuance of any permit, or an agreement executed pursuant to this article, or for any other lawful reason, the director may suspend or revoke the designation of such site. Any operator aggrieved by a suspension or revocation may appeal such action to the Lewis County commissioners. [Ord. 1157, 1998; Ord. 1123 § 10, 1992]

#### **8.15.110 Abandoned sites.**

It is unlawful for any person to fail to close when legally required or to abandon any disposal site. Any designated disposal site which is abandoned by its owner or operator shall be closed by such owner or operator in compliance with applicable local, state and federal laws. [Ord. 1157, 1998; Ord. 1123 § 11, 1992]

#### **8.15.120 Enforcement.**

Appropriate county officers and employees are authorized to take all lawful actions reasonably available to enforce in a timely manner the provisions of this article against any person violating those provisions including, but not limited to, bringing a civil and/or criminal action against that person and providing testimony and cooperation in the prosecution of that action; barring that person from use of a disposal site; requesting that the Washington Utilities and Transportation Commission revoke that person's certificate; and seeking equitable relief. [Ord. 1157, 1998; Ord. 1123 §12, 1992]

#### **8.15.130 Violation - Penalties.**

(1) Any person who knowingly fails to comply with LCC 8.15.040, 8.15.070, or 8.15.110 or who files or supplies any false, incomplete, or inaccurate information in connection with any application shall be subject to the penalties in LCC 1.20.020 and LCC 1.20.040. Nothing contained in this section shall be construed to exempt an offender from any other suit, prosecution, or penalty provided in another Lewis County ordinance or otherwise provided by law.

(2) Each violation or day of noncompliance shall constitute a separate violation. Any such civil penalty imposed pursuant to this section shall be subject to review by the board. [Ord. 1180 §7, 2002; Ord. 1123 § 13, 1992]

#### **8.15.140 Public nuisance.**

Any solid waste disposal site hereafter established, altered, expanded, improved, operated, or maintained in violation of any of the provisions of this article shall be and the same is hereby declared to be unlawful and a public nuisance. Any violation of LCC 8.15.030(3), 8.15.040, 8.15.070, and 8.15.110 is hereby declared to be a public nuisance. The prosecuting attorney, at the direction of the board, may take steps

necessary to abate such nuisances and to restrain and enjoin further unlawful acts. This section shall not limit or restrict any other power or authority authorized by law. [Ord. 1157, 1998; Ord. 1123 § 14, 1992]

### **Article II. Solid Waste Disposal District**

#### **8.15.150 District established.**

(1) Pursuant to RCW 36.58.100 et seq., a solid waste disposal district to be known as solid waste disposal district no. 1 of Lewis County is hereby established as a quasi-municipal corporation and independent taxing authority within the meaning of Article VII Section 1 and a taxing district within the meaning of Article VII Section 2 of the Constitution of the State of Washington.

(2) Such district is a body corporate and shall possess all the usual powers of such a corporation for public purposes as well as other powers that may now or hereafter be conferred by law. [Ord. 1157, 1998; Ord. 1124 § 1, 1992]

#### **8.15.160 Boundaries.**

The boundaries of said district shall be co-extensive with the boundaries of Lewis County and shall include the territory of all cities and towns lying within Lewis County. [Ord. 1157, 1998; Ord. 1124 § 2, 1992]

#### **8.15.170 Governing body.**

The governing body of said district shall be the legislative authority of Lewis County as now or hereafter constituted. [Ord. 1157, 1998; Ord. 1124 § 3, 1992]

### **Article III. Regulations**

#### **8.15.180 Regulation of solid waste disposal.**

The purpose of this article shall be to provide regulations to govern the storage, collection, transfer, transportation, processing, utilization, and final disposal of



# EXHIBIT D

*Jeremy Randolph*  
LEWIS COUNTY PROSECUTING ATTORNEY

COPY

July 20, 2004

CHIEF CIVIL DEPUTY  
Douglas E. Jensen  
CHIEF CRIMINAL DEPUTY  
J. Andrew Toynbee  
CHIEF ADMINISTRATOR  
Nancy Jones-Hegg  
DEPUTIES  
Donald A. Blair  
Catherine Vibbert  
Janelle C. Wilson  
Terri J. Gailfus  
Douglas P. Ruth  
L. Michael Golden  
Michael Maltby  
Christopher Baum  
Eric Eisinger  
Katherine Gulmert  
W. Kenneth Norris  
C. Shawn Shaha

Victor Bonagofski  
1303 W. Renolds Ave.  
Centralia, Washington, 98532

RE: Public Disclosure Request of July 14

Dear Mr. Bonagofski:

You have requested four sets of documents. In your first request, you asked the County to disclose documents that give the Community Development Department the authority to "force you to make a contract with that agency." The Community Development Department reports that they do not have any documents fitting that description. Of course, the Department has the authority to enter into a contract with you if you so desire. You may find that doing so would avoid being subject to an abatement suit. But the Department cannot force you to enter into an agreement. An agreement made under duress would be invalid.

Your second request is for documents that allow the Community Development Department to avoid compliance with RCW 42.17.250(1) and (2). There are no documents meeting your request. The Department is subject to all state laws and dutifully complies with them. However, RCW 42.17.250 does not apply to the Department. That section applies to state agencies, not local or county agencies.

In your third request for disclosure, you seek the policy and procedures manual for the Community Development Department. The Department reports that it does not have a general policy & procedures manual. It does have a **draft** code compliance policy, which I have enclosed. This policy is 24 pages, including appendixes. Please remit to this office \$3.60 to pay for the copying of this policy (pursuant to RCW 42.17.300).

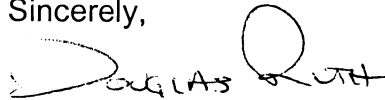
***LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE***

Mr. Jeffrey S. Myers  
July 20, 2004  
Page 2

Your last request is for the policy and procedures manual used by personnel working in the field. The draft policy I have enclosed is the document that most closely fits your request.

If you have any questions regarding this response, please contact me at 740-1260.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas Ruth". The signature is stylized with a large, looped "D" and a distinct "R".

Douglas Ruth  
Deputy Prosecuting Attorney

# EXHIBIT E

[H.ORD 041204 § 1, 2004; Ord. H99-0301, 1999; Ord. H-94-0302 §5, 1994]

#### **8.45.060 Definitions.**

When used in this chapter, the following terms have the meanings given below.

(1) "Active area" means that portion of a facility where solid waste recycling, reuse, treatment, storage, or disposal operations are being, are proposed to be, or have been conducted. Setbacks shall not be considered part of the active area of a facility.

(2) "Agricultural composting" means composting of agricultural waste as an integral component of a system designed to improve soil health and recycle agricultural wastes. Agricultural composting is conducted on lands used for farming.

(3) "Agricultural wastes" means wastes on farms resulting from the raising or growing of plants and animals including, but not limited to, crop residue, manure and animal bedding, and carcasses of dead animals weighing each or collectively in excess of fifteen pounds.

(4) "Agronomic rates" means the application rate (dry weight basis) that will provide the amount of nitrogen or other critical nutrient required for optimum growth of vegetation, and that will not result in the violation of applicable standards or requirements for the protection of ground or surface water as established under chapter 90.48 RCW, Water pollution control and related rules including chapter 173-200 WAC, Water quality standards for ground waters of the state of Washington, and chapter 173-201A WAC, Water quality standards for surface waters of the state of Washington.

(5) "Air quality standard" means a standard set for maximum allowable contamination in ambient air as set forth in chapter 173-400 WAC, General regulations for air pollution sources.

(6) "Below ground tank" means a

device meeting the definition of "tank" in this chapter where a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface of the tank that is in the ground.

(7) "Beneficial use" means the use of solid waste as an ingredient in a manufacturing process, or as an effective substitute for natural or commercial products, in a manner that does not pose a threat to human health or the environment. Avoidance of processing or disposal cost alone does not constitute beneficial use.

(8) "Biosolids" means municipal sewage sludge that is a primarily organic, semisolid product resulting from the wastewater treatment process, that can be beneficially recycled and meets all applicable requirements under chapter 173-308 WAC, Biosolids management. Biosolids includes a material derived from biosolids and septic tank sludge, also known as septage, that can be beneficially recycled and meets all applicable requirements under chapter 173-308 WAC, Biosolids management.

(9) "Buffer" means a permanently vegetated strip adjacent to an application area, the purpose of which is to filter runoff or overspray from the application area and protect an adjacent area.

(10) "Cab cards" means a license carried in a vehicle that authorizes that vehicle to legally pick up waste tires and haul to a permitted, licensed facility or an exempt facility for deposit.

(11) "Captive insurance companies" means companies that are wholly owned subsidiaries controlled by the parent company and established to insure the parent company or its other subsidiaries.

(12) "Channel migration zone" means the lateral extent of likely movement of a stream or river channel along a stream reach.

(13) "Clean soils and clean dredged

material” means soils and dredged material that do not contain contaminants at concentrations which could negatively impact the existing quality of air, waters of the state, soils, or sediments; or pose a threat to the health of humans or other living organisms.

(14) “Closure” means those actions taken by the owner or operator of a solid waste handling facility to cease disposal operations or other solid waste handling activities, to ensure that all such facilities are closed in conformance with applicable regulations at the time of such closures and to prepare the site for the post-closure period.

(15) “Closure plan” means a written plan developed by an owner or operator of a facility detailing how a facility is to close at the end of its active life.

(16) “Composted material” means organic solid waste that has undergone biological degradation and transformation under controlled conditions designed to promote aerobic decomposition at a solid waste facility in compliance with the requirements of this chapter. Natural decay of organic solid waste under uncontrolled conditions does not result in composted material.

(17) “Composting” means the biological degradation and transformation of organic solid waste under controlled conditions designed to promote aerobic decomposition. Natural decay of organic solid waste under uncontrolled conditions is not composting.

(18) “Conditionally exempt small quantity generator (CESQG)” means a dangerous waste generator whose dangerous wastes are not subject to regulation under chapter 70.105 RCW, Hazardous waste management, solely because the waste is generated or accumulated in quantities below the threshold for regulation and meets the conditions prescribed in WAC 173-303-070 (8)(b).

(19) “Conditionally exempt small

quantity generator (CESQG) waste” means dangerous waste generated by a conditionally exempt small quantity generator.

(20) “Container” means a portable device used for the collection, storage, and/or transportation of solid waste including, but not limited to, reusable containers, disposable containers, and detachable containers.

(21) “Contaminant” means any chemical, physical, biological, or radiological substance that does not occur naturally in the environment or that occurs at concentrations greater than natural background levels.

(22) “Contaminate” means the release of solid waste, leachate, or gases emitted by solid waste, such that contaminants enter the environment at concentrations that pose a threat to human health or the environment, or cause a violation of any applicable environmental regulation.

(23) “Contaminated soils and contaminated dredged material” means soils and dredged material that contain contaminants at concentrations which could negatively impact the existing quality of air, waters of the state, soils or sediments, or pose a threat to the health of humans or other living organisms.

(24) “Corrosion expert” means a person certified by the National Association of Corrosion Engineers (NACE) or a registered professional engineer who has certification or licensing that includes education and experience in corrosion control.

(24) “Crop residues” means vegetative material leftover from the harvesting of crops, including leftover pieces or whole fruits or vegetables, crop leaves and stems. Crop residue does not include food processing waste.

(25) “Dangerous wastes” means any solid waste designated as dangerous waste by the department under chapter 173-303 WAC, Dangerous waste regulations.

(26) "Department" means the Lewis County Health Department.

(27) "Detachable containers" means reusable containers that are mechanically loaded or handled, such as a dumpster or drop box.

(28) "Disposable containers" means containers that are used once to handle solid waste, such as plastic bags, cardboard boxes and paper bags.

(29) "Disposal" or "deposition" means the discharge, deposit, injection, dumping, leaking, or placing of any solid waste into or on any land or water.

(30) "Domestic septage" means Class I, II or III domestic septage as defined in chapter 173-308 WAC, Biosolids management.

(31) "Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of domestic wastewater together with such industrial waste as may be present.

(32) "Drop box facility" means a facility used for the placement of a detachable container including the area adjacent for necessary entrance and exit roads, unloading and turn-around areas. Drop box facilities normally serve the general public with loose loads and receive waste from off-site.

(33) "Energy recovery" means the recovery of energy in a useable form from mass burning or refuse-derived fuel incineration, pyrolysis or any other means of using the heat of combustion of solid waste that involves high temperature (above twelve hundred degrees Fahrenheit) processing.

(34) "Existing facility" means a facility which is owned or leased, and in operation, or for which facility construction has begun, on or before the effective date of this chapter and the owner or operator has obtained permits or approvals necessary under federal, state and local statutes,

regulations and ordinances.

(35) "Facility" means all contiguous land (including buffers and setbacks) and structures, other appurtenances, and improvements on the land used for solid waste handling.

(36) "Facility construction" means the continuous on-site physical act of constructing solid waste handling unit(s) or when the owner or operator of a facility has entered into contractual obligations for physical construction of the facility that cannot be canceled or modified without substantial financial loss.

(37) "Facility structures" means constructed infrastructure such as buildings, sheds, utility lines, and piping on the facility.

(38) "Garbage" means animal and vegetable waste resulting from the handling, storage, sale, preparation, cooking, and serving of foods.

(39) "Ground water" means that part of the subsurface water that is in the zone of saturation.

(40) "Health Officer" means the Lewis County Health Officer, as defined in Chapter 70.05 RCW, or the Health Officer's duly authorized representative.

(41) "Holocene fault" means a plane along which earthen material on one side has been displaced with respect to that on the other side and has occurred in the most recent epoch of the Quaternary period extending from the end of the Pleistocene to the present.

(42) "Home composting" means composting of on-site generated wastes, and incidental materials beneficial to the composting process, by the owner or person in control of a single-family residence, or for a dwelling that houses two to five families, such as a duplex or clustered dwellings.

(43) "Household hazardous wastes" means any waste which exhibits any of the properties of dangerous wastes that is

exempt from regulation under chapter 70.105 RCW, Hazardous waste management, solely because the waste is generated by households. Household hazardous waste can also include other solid waste identified in the local hazardous waste management plan prepared pursuant to chapter 70.105 RCW, Hazardous waste management.

(44) "Hydrostratigraphic unit" means any water-bearing geologic unit or units hydraulically connected or grouped together on the basis of similar hydraulic conductivity which can be reasonably monitored; several geologic formations or part of a geologic formation may be grouped into a single hydrostratigraphic unit; perched sand lenses may be considered a hydrostratigraphic unit or part of a hydrostratigraphic unit, for example.

(45) "Incineration" means reducing the volume of solid wastes by use of an enclosed device using controlled flame combustion.

(46) "Incompatible waste" means a waste that is unsuitable for mixing with another waste or material because the mixture might produce excessive heat or pressure, fire or explosion, violent reaction, toxic dust, fumes, mists, or gases, or flammable fumes or gases.

(47) "Industrial solid wastes" means solid waste generated from manufacturing operations, food processing, or other industrial processes.

(48) "Industrial wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of industrial wastewater.

(49) "Inert waste" means solid wastes that meet the criteria for inert waste in LCC 8.45.150.

(50) "Inert waste landfill" means a landfill that receives only inert wastes.

(51) "Intermediate solid waste handling facility" means any intermediate use or

processing site engaged in solid waste handling which is not the final site of disposal. This includes material recovery facilities, transfer stations, drop boxes, baling and compaction sites.

(52) "Intermodal facility" means any facility operated for the purpose of transporting closed containers of waste and the containers are not opened for further treatment, processing or consolidation of the waste.

(53) "Jurisdictional health department" means Lewis County Health Department.

(54) "Land application site" means a contiguous area of land under the same ownership or operational control on which solid wastes are beneficially utilized for their agronomic or soil-amending capability.

(55) "Land reclamation" means using solid waste to restore drastically disturbed lands including, but not limited to, construction sites and surface mines. Using solid waste as a component of fill is not land reclamation.

(56) "Landfill" means a disposal facility or part of a facility at which solid waste is permanently placed in or on land including facilities that use solid waste as a component of fill.

(57) "Leachate" means water or other liquid within a solid waste handling unit that has been contaminated by dissolved or suspended materials due to contact with solid waste or gases.

(58) "Limited moderate risk waste" means waste batteries, waste oil, and waste antifreeze generated from households.

(59) "Limited moderate risk waste facility" means a facility that collects, stores, and consolidates only limited moderate risk waste.

(60) "Limited purpose landfill" means a landfill which is not regulated or permitted by other state or federal environmental regulations that receives solid wastes limited by type or source. Limited purpose landfills include, but are not limited to, landfills that



receive segregated industrial solid waste, construction, demolition and landclearing debris, wood waste, ash (other than special incinerator ash), and dredged material. Limited purpose landfills do not include inert waste landfills, municipal solid waste landfills regulated under chapter 173-351 WAC, Criteria for municipal solid waste landfills, landfills disposing of special incinerator ash regulated under chapter 173-306 WAC, Special incinerator ash management standards, landfills regulated under chapter 173-303 WAC, Dangerous waste regulations, or chemical waste landfills used for the disposal of polychlorinated biphenyls (PCBs) regulated under Title 40 CFR Part 761, Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions.

(61) "Liquid" means a substance that flows readily and assumes the form of its container but retains its independent volume.

(62) "Liquid waste" means any solid waste which is deemed to contain free liquids as determined by the Paint Filter Liquids Test, Method 9095, in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846.

(63) "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete or asphalt, or unconsolidated earth materials, soil or regolith lying at or near the earth's surface.

(64) "Local fire control agency" means a public or private agency or corporation providing fire protection such as a local fire department, the department of natural resources or the United States Forest Service.

(65) "Lower explosive limits" means the lowest percentage by volume of a mixture of explosive gases that will propagate a flame in air at twenty-five degrees centigrade and atmospheric pressure.

(66) "Material recovery facility" means any facility that collects, compacts, repackages, sorts, or processes for transport source separated solid waste for the purpose of recycling.

(67) "Mobile systems and collection events" means activities conducted at a temporary location to collect moderate risk waste.

(68) "Moderate risk waste (MRW)" means solid waste that is limited to conditionally exempt small quantity generator (CESQG) waste and household hazardous waste (HHW) as defined in this chapter.

(69) "MRW facility" means a solid waste handling unit that is used to collect, treat, recycle, exchange, store, consolidate, and/or transfer moderate risk waste. This does not include mobile systems and collection events or limited MRW facilities that meet the applicable terms and conditions of WAC 173-350-360 (2) or (3).

(70) "Municipal solid waste (MSW)" means a subset of solid waste which includes unsegregated garbage, refuse and similar solid waste material discarded from residential, commercial, institutional and industrial sources and community activities, including residue after recyclables have been separated. Solid waste that has been segregated by source and characteristic may qualify for management as a non-MSW solid waste, at a facility designed and operated to address the waste's characteristics and potential environmental impacts. The term MSW does not include:

(a) Dangerous wastes other than wastes excluded from the requirements of chapter 173-303 WAC, Dangerous waste regulations, in WAC 173-303-071 such as

household hazardous wastes;

(b) Any solid waste, including contaminated soil and debris, resulting from response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601), chapter 70.105D RCW, Hazardous waste cleanup -- Model Toxics Control Act, chapter 173-340 WAC, the Model Toxics Control Act cleanup regulation or a remedial action taken under those rules; nor

(c) Mixed or segregated recyclable material that has been source-separated from garbage, refuse and similar solid waste. The residual from source separated recyclables is MSW.

(71) "Natural background" means the concentration of chemical, physical, biological, or radiological substances consistently present in the environment that has not been influenced by regional or localized human activities. Metals at concentrations naturally occurring in bedrock, sediments and soils due solely to the geologic processes that formed the materials are natural background. In addition, low concentrations of other persistent substances due solely to the global use or formation of these substances are natural background.

(72) "New solid waste handling unit" means a solid waste handling unit that begins operation or facility construction, and significant modifications to existing solid waste handling units, after the effective date of this chapter.

(73) "Nuisance odor" means any odor which is found offensive or may unreasonably interfere with any person's health, comfort, or enjoyment beyond the property boundary of a facility.

(74) "One hundred year flood plain" means any land area that is subject to one percent or greater chance of flooding in any given year from any source.

(75) "Open burning" means the burning

of solid waste materials in an open fire or an outdoor container without providing for the control of combustion or the control of emissions from the combustion.

(76) "Overburden" means the earth, rock, soil, and topsoil that lie above mineral deposits.

(77) "Permeability" means the ease with which a porous material allows liquid or gaseous fluids to flow through it. For water, this is usually expressed in units of centimeters per second and termed hydraulic conductivity.

(78) "Permit" means an authorization issued by the Health Officer which allows a person to perform solid waste activities at a specific location and which includes specific conditions for such facility operations.

(79) "Person" means an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatever.

(80) "Pile" means any noncontainerized accumulation of solid waste that is used for treatment or storage.

(81) "Plan of operation" means the written plan developed by an owner or operator of a facility detailing how a facility is to be operated during its active life.

(82) "Point of compliance" means a point established in the ground water by the Health Officer as near a possible source of release as technically, hydrogeologically and geographically feasible.

(83) "Post-closure" means the requirements placed upon disposal facilities after closure to ensure their environmental safety for at least a twenty-year period or until the site becomes stabilized (i.e., little or no settlement, gas production, or leachate generation).

(84) "Post-closure plan" means a written plan developed by an owner or operator of a facility detailing how a facility is to meet the post-closure requirements for the facility.

(85) "Premises" means a tract or parcel of land with or without habitable buildings.

(86) "Private facility" means a privately owned facility maintained on private property solely for the purpose of managing waste generated by the entity owning the site.

(87) "Processing" means an operation to convert a material into a useful product or to prepare it for reuse, recycling, or disposal.

(88) "Product take-back center" means a retail outlet or distributor that accepts household hazardous waste of comparable types as the products offered for sale or distributed at that outlet.

(89) "Public facility" means a publicly or privately owned facility that accepts solid waste generated by other persons.

(90) "Putrescible waste" means solid waste which contains material capable of being readily decomposed by microorganisms and which is likely to produce offensive odors.

(91) "Pyrolysis" means the process in which solid wastes are heated in an enclosed device in the absence of oxygen to vaporization, producing a hydrocarbon-rich gas capable of being burned for recovery of energy.

(92) "Recyclable materials" means those solid wastes that are separated for recycling or reuse, including, but not limited to, papers, metals, and glass, that are identified as recyclable material pursuant to a local comprehensive solid waste plan.

(93) "Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration. Recycling does not include collection, compacting, repackaging, and sorting for the purpose of transport.

(94) "Representative sample" means a sample that can be expected to exhibit the average properties of the sample source.

(95) "Reserved" means a section having no requirements and which is set aside for

future possible rule making as a note to the regulated community.

(96) "Reusable containers" means containers that are used more than once to handle solid waste, such as garbage cans.

(97) "Runoff" means any rainwater, leachate or other liquid that drains over land from any part of the facility.

(98) "Run-on" means any rainwater or other liquid that drains over land onto any part of a facility.

(99) "Scavenging" means the removal of materials at a disposal facility, or intermediate solid waste-handling facility, without the approval of the owner or operator and the Health Officer.

(100) "Seismic impact zone" means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in two hundred fifty years.

(101) "Setback" means that part of a facility that lies between the active area and the property boundary.

(102) "Sewage sludge" means solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated.

(103) "Soil amendment" means any substance that is intended to improve the physical characteristics of soil, except composted material, commercial fertilizers, agricultural liming agents, unmanipulated animal manures, unmanipulated vegetable manures, food wastes, food processing wastes, and materials exempted by rule of the department, such as biosolids as defined in chapter 70.95J RCW, Municipal sewage

sludge -- Biosolids and wastewater, as regulated in chapter 90.48 RCW, Water pollution control.

(104) "Solid waste" or "wastes" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, contaminated soils and contaminated dredged material, and recyclable materials.

(105) "Solid waste handling" means the management, storage, collection, transportation, treatment, use, processing or final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from such wastes or the conversion of the energy in such wastes to more useful forms or combinations thereof.

(106) "Solid waste handling unit" means discrete areas of land, sealed surfaces, liner systems, excavations, facility structures, or other appurtenances within a facility used for solid waste handling.

(107) "Source separation" means the separation of different kinds of solid waste at the place where the waste originates.

(108) "Storage" means the holding of solid waste materials for a temporary period.

(109) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), and which is designed to hold an accumulation of liquids or sludges. The term includes holding, storage, settling, and aeration pits, ponds, or lagoons, but does not include injection wells.

(110) "Surface water" means all lakes, rivers, ponds, wetlands, streams, inland waters, salt waters and all other surface water and surface water courses within the jurisdiction of the state of Washington.

(111) "Tank" means a stationary device designed to contain an accumulation of liquid or semisolid materials meeting the definition of solid waste or leachate, and which is constructed primarily of nonearthen materials to provide structural support.

(112) "Tire-Derived Fuel (TDF)": A fuel derived from waste tires, processed into relatively uniform, flowable pieces of less than six inches in length which serve an end-user as fuel.

(113) "Tire-Derived Material (TDM)": Any rubber, steel or fabric material derived from processing tires or rubber products which are less than six inches in length.

(114) "Transfer station" means a permanent, fixed, supplemental collection and transportation facility, used by persons and route collection vehicles to deposit collected solid waste from off-site into a larger transfer vehicle for transport to a solid waste handling facility.

(115) "Treatment" means the physical, chemical, or biological processing of solid waste to make such solid wastes safer for storage or disposal, amenable for recycling or energy recovery, or reduced in volume.

(116) "Twenty-five-year storm" means a storm of twenty-four hours duration and of such intensity that it has a four percent probability of being equaled or exceeded each year.

(117) "Type 1 feedstocks" means source-separated yard and garden wastes, wood wastes, agricultural crop residues, wax-coated cardboard, preconsumer vegetative food wastes, other similar source-separated materials that the Health Officer determines to have a comparable low level of risk in hazardous substances, human pathogens, and physical contaminants.

(118) "Type 2 feedstocks" means manure and bedding from herbivorous animals that the Health Officer determines to have a comparable low level of risk in hazardous substances and physical contaminants when compared to a type 1

feedstock.

(119) "Type 3 feedstocks" means meat and postconsumer source-separated food wastes or other similar source-separated materials that the Health Officer determines to have a comparable low level of risk in hazardous substances and physical contaminants, but are likely to have high levels of human pathogens.

(120) "Type 4 feedstocks" means mixed municipal solid wastes, postcollection separated or processed solid wastes, industrial solid wastes, industrial biological treatment sludges, or other similar compostable materials that the Health Officer determines to have a comparable high level of risk in hazardous substances, human pathogens and physical contaminants.

(121) "Universal wastes" means universal wastes as defined in chapter 173-303 WAC, Dangerous waste regulations. Universal wastes include, but may not be limited to, dangerous waste batteries, mercury-containing thermostats, and universal waste lamps generated by fully regulated dangerous waste generators or CESQGs.

(122) "Unstable area" means a location that is susceptible to forces capable of impairing the integrity of the facility's liners, monitoring system or structural components. Unstable areas can include poor foundation conditions and areas susceptible to mass movements.

(123) "Vadose zone" means that portion of a geologic formation in which soil pores contain some water, the pressure of that water is less than atmospheric pressure, and the formation occurs above the zone of saturation.

(124) "Vector" means a living animal, including, but not limited to, insects, rodents, and birds, which is capable of transmitting an infectious disease from one organism to another.

(125) "Vermicomposting" means the

controlled and managed process by which live worms convert organic residues into dark, fertile, granular excrement.

(126) "Waste tires" means any tires that are no longer suitable for their original intended purpose because of wear, damage or defect. Used tires, which were originally intended for use on public highways that are considered unsafe in accordance with RCW 46.37.425, are waste tires. Waste tires also include quantities of used tires that may be suitable for their original intended purpose when mixed with tires considered unsafe per RCW 46.37.425.

(127) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(128) "Wood derived fuel" means wood pieces or particles used as a fuel for energy recovery, which contain paint, bonding agents, or creosote. Wood derived fuel does not include wood pieces or particles coated with paint that contains lead or mercury, or wood treated with other chemical preservatives such as pentachlorophenol, copper naphthanate, or copper-chrome-arsenate.

(129) "Wood waste" means solid waste consisting of wood pieces or particles generated as a by-product or waste from the manufacturing of wood products, construction, demolition, handling and storage of raw materials, trees and stumps. This includes, but is not limited to, sawdust, chips, shavings, bark, pulp, hogged fuel, and log sort yard waste, but does not include wood pieces or particles containing paint, laminates, bonding agents or chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.